

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	:
	:
	:
GAME SHOW NETWORK, LLC,	: MB Docket No.
Complainant,	: 12-122
	:
v.	: File No.
	: CSR-8529-P
CABLEVISION SYSTEMS CORP.,	:
Defendant,	:
	:
Program Carriage Complaint	:

Friday,
July 10, 2015

Volume IV

Hearing Room A
Room TW-A363
445 12th Street, SW
Washington, D.C.

The above-entitled matter came on for hearing, pursuant to notice, at 9:37 a.m.

BEFORE: THE HONORABLE RICHARD L. SIPPEL,
Chief Administrative Law Judge

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WITNESSESDIRECT CROSS REDIRECT RECROSS

Hal Singer

By Mr. Phillips

899

1078

By Mr. Cohen

917

1107

By Ms. Kane

1110

EXHIBIT NO.DESCRIPTIONMARK RECDGSN301 Written direct testimony of
Dr. Hal Singer

867 869

330 Kagan Data

1102 1102

Cablevision

702 Memo to Michael

944 946

701 Duplication analysis between GSN's
Saturday night audience and Hallmark's
Saturday night audience

946 949

715 Kagan Data

996 998

721 Singer Declaration in MASN Case

1000 1004

705

1012 1016

Closed Sessions: 887-917/1022-1077/1100-1128

OTR: 9:37 a.m.

Lunch: 1:09 p.m. to 2:35 p.m.

OTR: 5:45 p.m.

P-R-O-C-E-E-D-I-N-G-S

(9:37 a.m.)

JUDGE SIPPEL: Does anybody have any preliminary matters this morning?

MR. COHEN: Just one thing, Your Honor. Just to tee something up for next week. I think that we have one outstanding objection about the introduction of video evidence. And we'd like to be heard on that. Not today.

JUDGE SIPPEL: No, not today. Who wants to get it in?

MR. COHEN: We want to get in the sizzle reels that Mr. Zaccario, I examined him about yesterday.

JUDGE SIPPEL: He said they're no good.

MR. COHEN: What's that?

JUDGE SIPPEL: He said they're no good.

MR. COHEN: Well, that's not really what he said. We'll look at the transcript.

JUDGE SIPPEL: That was my, I'm sorry, that was my reading. We'll talk about it.

MR. COHEN: Okay. I just want to remind, Your Honor, that's our only outstanding issue on our side, that I'm aware of.

JUDGE SIPPEL: Are you into video, too, or you're cool?

MR. SCHMIDT: No, we're cool.

(Laughter.)

JUDGE SIPPEL: Okay. So, this morning we have an expert.

MR. SCHMIDT: Yes. We have Dr. Singer, Your Honor.

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1 JUDGE SIPPEL: Dr. Singer.

2 MR. SCHMIDT: And Mr. Phillips is making a special
3 appearance questioning Dr. Singer.

4 JUDGE SIPPEL: You know, I knew you had a reason to be
5 here. I just knew it. I could feel it in my bones.

6 MR. PHILLIPS: Well, it's good to be back, Your Honor.

7 JUDGE SIPPEL: It's good to have you back. Where's Dr.
8 Singer? Where are you? There he is. Could you come forward, sir,
9 please? I can't say that you're still under oath from Tennis
10 Channel, so I'm going to have to do it again.

11 (Laughter.)

12 WHEREUPON,

13 HAL SINGER

14 was called as a witness by Counsel for the Complainant and, having
15 been first duly sworn, assumed the witness stand, was examined and
16 testified as follows:

17 JUDGE SIPPEL: Thank you. Please be seated.
18 Comfortable? You have enough water and everything?

19 THE WITNESS: Yes.

20 MR. PHILLIPS: Your Honor, if I may, I'd like to -- if I
21 could approach, I'd like to give both the Court and the witness --

22 JUDGE SIPPEL: Go right ahead. Just go right ahead.

23 MR. PHILLIPS: Thank you.

24 JUDGE SIPPEL: And by the way, my rambling comments
25 yesterday about objections and what not with expert witnesses is

1 actually a -- I meant just the opposite. I'm hoping this evidence,
2 this testimony, can go smooth with the least amount of
3 interruptions as possible. So, that's my wish.

4 MR. PHILLIPS: Your Honor, I join you in that wish.

5 JUDGE SIPPEL: Okay. I'm sure you do. It's your
6 witness. I'm sure you do. But I'm not being funny. That's fine.
7 That's fine. Let's go.

8 MR. PHILLIPS: So, Dr. Singer, is he sworn or --

9 JUDGE SIPPEL: He's sworn.

10 MR. PHILLIPS: Okay. Good morning, Dr. Singer.

11 THE WITNESS: Good morning.

12 DIRECT TESTIMONY

13 BY MR. PHILLIPS: I've put before you your testimony in
14 this matter, your written testimony.

15 (Whereupon, the above-referred to document was marked as
16 GSN Exhibit No. 301 for identification.)

17 MR. PHILLIPS: Is that your statement, sir?

18 THE WITNESS: Yes.

19 MR. PHILLIPS: Your Honor, Mr. Cohen and I have reached
20 an agreement that if we withdraw without prejudice -- let me make
21 sure I get this exactly right. If you'll excuse me while I pull it
22 up. If we withdraw without prejudice the last sentence of
23 Paragraph 110.

24 JUDGE SIPPEL: Paragraph 110.

25 MR. PHILLIPS: And Footnote 218.

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1 JUDGE SIPPEL: Let me go to Paragraph 110.

2 MR. COHEN: Page 75, Your Honor.

3 MR. PHILLIPS: On Page 75.

4 JUDGE SIPPEL: Page 75. Why are there no page --

5 MR. PHILLIPS: They're at the top, Your Honor.

6 JUDGE SIPPEL: Oh, I see. I see. I've got you.

7 MR. PHILLIPS: That if we withdraw those that Mr. Cohen
8 will not object to our motion to admit -- withdrawal those without
9 prejudice, Mr. Cohen will agree that we can move this in without
10 objection.

11 MR. COHEN: Subject to Your Honor's reservation of rights
12 in our in limine motion. Yes.

13 JUDGE SIPPEL: Okay, let me read the sentence. This the
14 one that starts, "several filings"? .

15 MR. PHILLIPS: Yes, Your Honor. That sentence and the
16 footnote.

17 JUDGE SIPPEL: And the Comcast, Time Warner Cable
18 preceding issue emphasis that local markets are the relevant
19 geographic markets setting competitive facts.

20 And is the footnote below that or is it on another page?

21 MR. PHILLIPS: The footnote is below that, Your Honor.
22 It's the first footnote in the footnote section.

23 JUDGE SIPPEL: Oh, 218. See comments, et cetera?

24 MR. PHILLIPS: Yes, Your Honor.

25 JUDGE SIPPEL: Okay. All right. Hold on just a minute.

1 I ask one question, one question, and that is, I'm not sure I'm
2 clear on your objection being withdrawn without prejudice. Did I
3 understand that be the way that --

4 MR. PHILLIPS: Well, we withdraw -- his objection stands
5 and is not waived. We're withdrawing this material without
6 prejudice. We may cite it in post-hearing briefs, but I don't
7 think this witness is necessary for it. It stands on its own.

8 JUDGE SIPPEL: And you're satisfied with that?

9 MR. COHEN: Yes, Your Honor.

10 JUDGE SIPPEL: Fair enough. Okay.

11 (Whereupon, the above-referred to document was received
12 into evidence as GSN Exhibit No. 301.)

13 MR. PHILLIPS: See, Your Honor, we've already started the
14 day withdrawing objections.

15 JUDGE SIPPEL: We can go home?

16 (Laughter.)

17 MR. PHILLIPS: Not quite.

18 JUDGE SIPPEL: Mr. Phillips, see I knew good things would
19 come from New York.

20 MR. PHILLIPS: Thank you, Your Honor.

21 MR. COHEN: Your Honor, we were colleagues 30 years ago.

22 MR. PHILLIPS: Thirty years ago. That's when I came to
23 respect how good a lawyer Mr. Cohen is.

24 JUDGE SIPPEL: Oh god, here we go.

25 MR. COHEN: Here we go.

1 JUDGE SIPPEL: That's like Harper talking about Trout or
2 something. Same league, just different team.

3 MR. PHILLIPS: Dr. Singer, can you explain to me, what is
4 discrimination mean to an economist?

5 THE WITNESS: Sure. So, I'm looking --

6 JUDGE SIPPEL: In terms of 616 or --

7 BY MR. PHILLIPS:

8 Q Just as a general matter.

9 A Sure. I think there's three important elements to test
10 a discrimination hypothesis. One is that we're looking at
11 disparate treatment. That would be the first element. Number two,
12 of similarly situated entities. And three, without any offsetting
13 efficiency justification.

14 Q Now, in this matter, did you look at whether or not there
15 was discrimination as an economist?

16 A I did.

17 Q And can you give me your conclusions? And let's break it
18 down, if we could. Disparate treatment. What did you look at,
19 what did you find?

20 A So, for disparate treatment, I looked to see if
21 Cablevision was affording favorable treatment of its affiliated
22 networks vis-a-vis GSN. And it's pretty clear to me that they are.
23 Cablevision carries its own affiliates in broadly distributed tiers
24 that reached something in the order of 90 percent of their
25 customers.

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1 And in contrast, they carry GSN on what used to be a
2 Sports Tier, now called the Sports Entertainment Tier, which
3 reaches less than ten percent of Cablevision's customers.

4 Q What other networks are carried on that Sports and
5 Entertainment Tier?

6 A They are all national sports networks. So, it's an
7 unnatural fit. And, indeed, I understand that Cablevision was
8 forced to rename the tier upon the tiering, so that it would
9 accommodate GSN. They renamed it to the Sports and Entertainment
10 Tier.

11 Q Did you examine whether or not any of the networks on the
12 Sports Tier are affiliated with Cablevision?

13 A None of them are affiliated with Cablevision.

14 Q Let me ask you about the second -- you know what, I'm
15 going to go through this right now, Dr. Singer, with just sort of
16 the summary of your opinion.

17 A Sure.

18 Q Let me ask you about the second element you mentioned,
19 which was similarly situated. Did you look at whether or not GSN
20 was similarly situated to WE tv?

21 A I did. I performed my analysis through three different
22 lenses, or three different vantages. One was from the perspective
23 of viewers. So I looked at viewer viewing patterns. Whether
24 viewers, for example, substituted their minutes over to WE tv when
25 GSN was taken away from them. I looked at the types of programs

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1 that were available on both networks.

2 I also looked at the question of similarly situated from
3 the vantage of advertisers. You know, advertisers who want to hit
4 a particular demographic. And the inquiry here was whether these
5 two networks served up the same or similar demographics. And I
6 believe they did.

7 And finally I looked at the extent of overlap among
8 rights holders. And I did find that there was some overlap on that
9 dimension, as well.

10 Q I want to focus you for one second on the first thing you
11 said, which was viewers. What did you find about the overlap of
12 viewers between GSN and WE tv?

13 A Well, I looked at lots of evidence on this front. I
14 looked at viewing patterns as recorded by Nielsen. Nielsen keeps
15 statistics or metrics on -- fancy word for it is both duplication
16 reports, but they're looking to see if viewers are in common
17 between the networks. And I looked at how those commonalities
18 ranked with respect to other network pairings. And GSN and WE tv
19 were very, very close in that dimension.

20 I also looked at viewing from Cablevision, which provided
21 set-top box viewing data, and I was able to measure the lift among
22 Cablevision subscribers that were deprived of watching GSN.

23 The question was whether or not, when you take away GSN
24 from them, do you observe a lift in their WE tv viewing? And,
25 indeed, you find a statistically significantly increase in WE tv

1 among those viewers that were deprived of GSN.

2 Q Alright, let me move on to efficiency justifications. I
3 take it that that's sort of an economist word for, "was this a
4 profitable move when they put GSN up on a Sports Tier?" And what
5 did you examine this issue?

6 A I did. I did examine it, yes.

7 Q And what did you find, sir?

8 A Well, I wanted to explore whether there was any plausible
9 motivations, or efficiency, or compelling justifications that would
10 otherwise explain the conduct unrelated to discrimination. These
11 are the two dueling hypothesis.

12 And I concluded that there were no compelling efficiency
13 justifications. I think that, to the extent that a cost-benefit
14 test was applied, it was applied to only GSN, which in my view is
15 discriminatory on its face.

16 Number two, Cablevision's treatment sticks out like an
17 anomaly when it comes to its peer group. I looked at how
18 Cablevision's peers were treating GSN. And none of them treat GSN
19 this way.

20 And then, finally, based on a profit sacrifice test, it
21 appears that Cablevision's downstream distribution division
22 suffered a loss as a result of the tiering episode. So, for all of
23 those reasons, I conclude that the efficiency justifications just
24 don't hold water.

25 Q And so what conclusion did you come to after analyzing

1 these three sets of factors?

2 A Sure. Well, you have disparate impact, and similarly
3 situated, and no efficiency justifications. I think the best
4 hypothesis that explains the data here is the discrimination
5 hypothesis.

6 Q Thank you, Dr. Singer. Now, your report goes into great
7 detail on all of these opinions, and your analysis. And in the
8 interest of just hitting the highlights, I'm going to turn to the
9 last factor that you talked about, which are the efficiency
10 justifications, the question whether this was a move to save money.
11 And in particular, I'd like to focus on your peer group analysis.
12 Can you explain to me what that is again?

13 A Sure. So, what I want to do there -- and the Judge has
14 seen this and my prior testimony comes up over and over, it's a
15 nice starting point. And I think I and the opposing expert agree
16 that looking at how the peers treat the network in question is very
17 informative.

18 If you see other peers that are also tiering GSN, or
19 carrying GSN on a lowly penetrating tier, that might suggest that
20 affiliation into women's programing isn't the cause of what's going
21 on. But there's also another important reason for looking at this.
22 And it's subtle, but I think it deserves attention. And that is,
23 you have to presume that what the other cable distributors are
24 doing is profit maximizing.

25 In other words, if there was money that could be scooped

1 up on the table by tiering GSN, as Cablevision has done, you would
2 expect the other cable operators to do that. And you don't do --
3 you don't observe it. They're generally carrying Cablevision
4 broadly.

5 I have to, as an economist, presume that they're doing it
6 because that's the profit maximizing thing to do. And so conduct
7 that is contrary to what is basically the industry standard
8 practice, implies, to me, that there could be a profit sacrifice at
9 work here.

10 Q I think you said, "carry Cablevision broadly." You meant
11 GSN?

12 A Yeah, I must need another cup of coffee. Yes. Yes, I
13 meant carry GSN broadly.

14 Q Let me ask you to turn, Dr. Singer, to the part of the
15 analysis that you did on this issue in your report and written
16 testimony. And to Table 8 on Page 45 of your written testimony.

17 A So Page 45, Table 8?

18 Q Yes. Page 45, Table 8.

19 A Okay, I'm there.

20 MR. PHILLIPS: Your Honor, are you there?

21 JUDGE SIPPEL: I am.

22 MR. PHILLIPS: Okay. Mr. Cohen, staying with me?

23 MR. COHEN: Trying to.

24 BY MR. PHILLIPS:

25 Q Dr. Singer, can you explain to me, what is -- did you

1 prepare this table, by the way?

2 A Yes.

3 Q And what does it show me?

4 A So, what I've done for each distributor, in what I
5 consider to be the peer group, and these are distributors with at
6 least two million subscribers, I wanted to see what GSN's
7 penetration looked like.

8 I should tell you, by the way, just going into this
9 exercise, I already know from SNL Kagan -- this is about four lines
10 above the table -- that GSNs penetration across all MVPDs, all
11 distributors in the country, is about [REDACTED] percent. Right? And I
12 wanted to see what it looked like for what I considered to be
13 Cablevision's peers. Right? And so this is a list of their peers.
14 You see Comcast, DIRECTV.

15 You get to see in the first column the total basic
16 subscribers for each of those distributors. And you get to see how
17 many of those subscribers get GSN. And then, finally, this is not
18 very complicated math, it's the ratio of GSN subscribers. The
19 total subscribers. And you get what I call "GSN penetration."

20 What this allows one to do is to compare Cablevision's
21 treatment of GSN to that of its peers. And you see Cablevision is
22 carrying GSN to only nine percent of its viewers.

23 And in contrast, when you take the average of the non-
24 Cablevision firms in this peer group, GSN's penetration is at [REDACTED]
25 percent. And that is nearly [REDACTED] greater.

1 And so, to me, that's a very, very important finding as
2 it speaks to all of these issues, discrimination and profit
3 sacrifice.

4 Q Now, how did you select this particular peer group?

5 A Well, as I said, it was based on a distributor having at
6 least two million subscribers.

7 Q And do any of these distributors have Sports Tiers?

8 A Sure. Sure they do.

9 Q And I take it that these percentages of penetration take
10 into account their Sports Tier carriage, as well, correct?

11 A Yes.

12 Q So, what's your takeaway from this finding, Dr. Singer?

13 A Again, I think that it highlights how different
14 Cablevision's treatment is relative to its peers. And it seems to
15 suggest that someone is incurring a sacrifice. It's either
16 Cablevision or it's all these other firms. And my strong
17 inclination is to believe that these firms are acting in a profit
18 maximizing way. And that is suggestive to me that perhaps
19 Cablevision is not.

20 Q Thank you. Let's move to another subject. Also --

21 JUDGE SIPPEL: I don't want to get ahead of myself.

22 MR. PHILLIPS: Okay.

23 JUDGE SIPPEL: Or ahead of you, I'm sorry. But if
24 Cablevision is putting aside profit maximizing while all these
25 other carries are, well, doing what you say. If they're foregoing

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1 profit maximization, why would they be doing this to Game Show?

2 THE WITNESS: That's a great question. If you are
3 engaging in a profit sacrifice in your downstream distribution
4 division, and if you are a profit maximizing firm, you're not just
5 going to tolerate it. It better be the case that there is some
6 offsetting gain in a different division.

7 And here the offsetting gain could be the gains that go
8 to Cablevision's affiliated and similarly situated programing
9 networks. In particular, WE tv. Recall I find that WE tv enjoyed
10 a statistically significant lift in viewing around the time of the
11 tiering, right? So, a firm would be willing, a vertically-
12 integrated cable operator -- I like to call them VICOs because it's
13 hard to say that over and over again -- but a VICO would be willing
14 to incur a downstream loss only if there was some offsetting gain
15 to a different division.

16 I think that's, in fact, the spirit of the test that the
17 D.C. Circuit has laid out in the Comcast decision.

18 JUDGE SIPPEL: Okay. So, then, why is Cablevision the
19 only one in this group that's doing that? Is it because Comcast,
20 et cetera, they don't have a similarly situated affiliate?

21 THE WITNESS: So, many of these don't, some of them do.
22 Starting from DISH down -- I've checked this -- DISH, Cox, Charter,
23 Verizon and AT&T, they're not vertically-integrated at all into
24 women's programing.

25 JUDGE SIPPEL: Okay.

1 THE WITNESS: Okay. I do find some vertical-integration
2 by Comcast and Time Warner, DIRECTV. But I have not performed the
3 same similarly situated analysis as I have done here for those
4 pairings.

5 JUDGE SIPPEL: But could it -- okay. And I should ask
6 the question, why not? Why wouldn't you be interested in finding
7 that out?

8 MR. PHILLIPS: Well, Your Honor, if I may?

9 JUDGE SIPPEL: Yes.

10 MR. PHILLIPS: The assignment that we gave Dr. Singer was
11 to examine whether or not GSN was being discriminated against in
12 favor of similarly situated networks that are affiliates owned by
13 Cablevision. In other words, is Cablevision doing this in order to
14 turn viewers to WE tv?

15 And so we didn't ask him to look at anybody else other
16 than that. But at the same time, as you know, Your Honor, from
17 prior times, certainly -- I've been here before, Your Honor,
18 looking at the question of whether Comcast similarly discriminated
19 in favor of a sports network against Tennis Channel, and whether
20 Comcast similarly discriminated against the NFL Network by a sports
21 channel.

22 So, I'm not trying to suggest that there may not be an
23 issue there of discrimination, but the only thing that's the focus
24 of this preceding, and the only thing we asked Dr. Singer to do,
25 was to look at the question of, is there discrimination here, is

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1 there a cost efficiency?

2 In other words, do they make money by putting GSN on the
3 Sports Tier, and how do you figure that out? And one way that you
4 can figure that out is, well, does anybody else make money if you
5 put them on a sports tier? They don't. Then, why not? If there's
6 money to be. And if there's not money to be made then it makes
7 sense to do what the rest of the industry does and treat them as
8 broadly distributed.

9 MR. COHEN: Your Honor, if I may? I do have a preference
10 -- obviously, Your Honor's call -- that if Your Honor asks a
11 question of the witness we not have argument in the middle of
12 direct examination.

13 I mean, that was sort of a summation of Dr. Singer's
14 opinion. You know, and I have lots of things to say about that.
15 I'll reserve it to cross, but I do think it's inappropriate in the
16 middle of a direct examination for Mr. Phillips to essentially be
17 presenting an argument to Your Honor.

18 JUDGE SIPPEL: Well, it may be. And that right now is
19 beside the point. What I was trying to get at was, Dr. Singer was
20 very clear. He said that everything in his analysis was perfectly
21 understood up to the point where he said, "they forego," they being
22 Cablevision, foregoes the profits that these other -- I guess, can
23 I call them distributors?

24 MR. COHEN: Yes.

25 JUDGE SIPPEL: Are realizing profit maximizing in order

1 to get a benefit downstream. A monetary benefit or profit benefit
2 downstream.

3 And I'm simply asking the question, why wouldn't Comcast
4 and Time Warner think the same thing if they have -- if they do
5 have -- again, this qualifies it -- a qualified affiliate
6 programmer? Maybe they have one that's in the ballpark, I don't
7 know.

8 THE WITNESS: Can I?

9 JUDGE SIPPEL: Please. Are you waiting for him to answer
10 that question?

11 MR. PHILLIPS: I certainly am.

12 THE WITNESS: And it was a great question. I think that
13 the, you know, if you look at how many pages of ink that I spilled
14 on the similarly situated analysis, it's not something that could
15 trivially be done, to go look at what Comcast owns. You asked me
16 why didn't I, for example, look to see if Comcast's affiliate --
17 this is how in interpreted your question, anyway --

18 JUDGE SIPPEL: Yes.

19 THE WITNESS: -- right, whether a Comcast-affiliated
20 network gets into women's programming space is similarly situated
21 in my opinion to, say, GSN. Right? And to undertake such an
22 analysis, it would be quite an undertaking, a lot of work.

23 But I sympathize with your concern that, to the extent
24 that three of these peers might be vertically integrated, there
25 could be problems with the peer group. Which is fine, okay? No

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1 peer group is perfect, right?

2 If that concerns you, then just look at the remainder,
3 the remaining firms in the peer group, that are unequivocally not
4 vertically integrated into women's programming. They could not
5 possibly have any basis for wanting to favor an upstream firm with
6 the hope of getting a lift in viewing, right? They might be
7 vertically integrated in other ways, but not women's programming.

8 JUDGE SIPPEL: I understand.

9 THE WITNESS: So, I take comfort in knowing that DISH,
10 Cox, Charter, Verizon and AT&T have no vertical integration into
11 women's programming. I also take comfort in the fact that, when
12 you go to the industry average of ■ percent, that covers every
13 distributor, right? That covers the mom and pops as well.

14 And what this is telling me is that it is generally
15 profitable to carry GSN broadly, at least more broadly than what
16 Cablevision's doing. And Cablevision has a pretty clear motive
17 here to kind of buck the trend, to do something different than the
18 industry average, because they could enjoy -- I like to call it an
19 upstream; you said downstream -- an upstream benefit to their
20 content division that is similarly situated.

21 JUDGE SIPPEL: Okay, I'm finished with that.

22 MR. PHILLIPS: Okay, Your Honor. As I said, Your Honor,
23 I'm trying to hit, through the interest of time and because his
24 report is in evidence, I'm going to try to just hit some highlights
25 here. But I'd certainly welcome -- you're the most important

1 person in the room, Your Honor. If you have questions please let
2 me know, and I'll stop for it.

3 JUDGE SIPPEL: Well, don't leave out the reporter. If he
4 have questions --

5 MR. PHILLIPS: Oh, exactly.

6 JUDGE SIPPEL: Thank you, Mr. Phillips.

7 MR. PHILLIPS: Dr. Singer, let's turn to what else you
8 did to look at the question of efficiency justification, the
9 question of whether it made sense to put GSN on a sports tier to
10 make more money.

11 THE WITNESS: Right.

12 MR. PHILLIPS: What else did you look at?

13 THE WITNESS: Right. So, now what we have is this, I
14 think, very workable hypothesis. And the hypothesis is that, was
15 there a profit sacrifice? Is the reason why they're deviating from
16 the industry norm because there's some offsetting benefit?

17 At this stage, it's a hypothesis. And what I want to do
18 is run that to ground. And it's very interesting that the D.C.
19 Circuit happens to believe that that's an important analysis to run
20 to ground, as well.

21 So I tried, as best I could, to follow the instructions
22 of the Court in performing the various profit sacrifice tests that
23 they outlined. They use a paragraph to describe them. And I've
24 shortened it to what I call the profit sacrifice test and the net
25 profit sacrifice test.

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1 BY MR. PHILLIPS:

2 Q Now, how did you run those tests?

3 A Right. So, first of all, let me just try to define them.
4 And then it's easier to talk about how to run them. But the profit
5 sacrifice is easy. I mean, that just suggests that, as the name
6 connotes, that there was a sacrifice in the downstream division.
7 And you would obtain such a sacrifice if you compared the cost of
8 the tiering to the benefits of the tiering, and you found that the
9 cost outweighed the benefits. That's an easy one.

10 Then they offer a second, which is harder. And every
11 time I say it I have to slow down. But I refer to it as the net
12 profit sacrifice test. And this is the notion that even if there
13 wasn't a loss, that, to the extent that there would have been an
14 even larger gain from tiering your own, that could be consistent
15 with evidence of discrimination.

16 The exact language that they use is that -- and I'm
17 paraphrasing -- but if the losses associated with broad carriage of
18 the affiliate were equal to or less than the losses of broadly
19 carrying their affiliated networks. That's why I have to slow
20 down.

21 Q Yeah, I'm going to ask you to slow down one other place,
22 because, as you know, I'm not an economist, and I get lost in
23 language some times. When you talk about downstream division, what
24 are you talking about?

25 A Yes, and I apologize for this. I'll try to say

1 downstream distribution or just distribution division. That's the
2 cable company. That's the one that's interfacing with the
3 customers.

4 Q And when you talk about upstream division, what are you
5 referring to?

6 A I'm referring to the programming division, the upstream
7 inputs.

8 Q So, you ran these two tests, as I understand it, that you
9 read from the D.C. Circuit opinion. How did you perform these
10 tests?

11 A Yeah, so, I ended up performing them two ways. I think
12 that the big dividing point right before you try to take on this
13 exercise is to ask how you're going to deal with what I call
14 mitigation strategies, which is when things go bad and you try to
15 make them better. The calculus starts to get a lot more
16 complicated, which is fine. That's what happens in the real world.

17 But my reading of the opinion suggests that at least I
18 want to do one run, which is a simple experiment: what would have
19 happened if Cablevision had just tiered GSN, period, end of story?
20 That's going to be my first runthrough.

21 So, I'm going to do the profit sacrifice test under that
22 assumption. That is no mitigation strategies. When I say no
23 mitigation strategies, the mitigation strategy that we're talking
24 about here, of course, is the subsidy that Cablevision offered to
25 retain customers, to keep them happy and give them six months of

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1 free Sports Tier so they could continue watching GSN.

2 I'm going to do one run without the mitigation
3 strategies. And then I'm going to go back, and I'm going to do it
4 again with the mitigation strategies. I am worried and concerned
5 about ease of exposition. And I want to make sure the reader can
6 digest what I'm doing. So I want to start, again, today, with the
7 easier of the two, that is without the mitigation strategies.

8 Q And so let's take the affirmative test. You're going to
9 compare the costs on one side and the benefits on the other side of
10 putting GSN up on a sports tier without talking into account the
11 subsidy. That's what I understand you to say.

12 A In a first passthrough, correct.

13 Q Right, okay. Now, what did you use for cost in this
14 equation?

15 A Right, right. So, I think there are two important types
16 of costs to consider when you take away a network that customers
17 used to watch.

18 MR. COHEN: Your Honor, if I could interrupt for a
19 moment.

20 JUDGE SIPPEL: Yes.

21 MR. COHEN: I do think some of the churn analysis
22 involves confidential Cablevision information. So, if you can ask
23 your questions in a way that we don't have to ask Mr. Feldman to
24 leave.

25 MR. PHILLIPS: You know, I've got a feeling we should

1 just close on this.

2 MR. COHEN: Okay, all right.

3 MR. PHILLIPS: I'm sorry to do that, Your Honor. I don't
4 think there's a way to fine-tune this thing.

5 JUDGE SIPPEL: I get to stay here, so that's okay. Thank
6 you very much.

7 (Pause.)

8 (OPEN SESSION ENDS)

9 (CLOSED SESSION STARTS)

10 JUDGE SIPPEL: I want to get some idea as to how long you
11 expect to be.

12 MR. PHILLIPS: I don't think very long. This whole
13 examination I don't expect to take a long time.

14 JUDGE SIPPEL: Alright. Okay. Well, let's go. He's
15 left the room.

16 MR. PHILLIPS: Yes. I'm sorry. Go ahead, Dr. Singer.
17 You were explaining, I think, the cost -- the first test, and you
18 were at the costs and the benefits.

19 THE WITNESS: Yes. I want to try to make this as
20 straight forward as possible. I consider there to be two important
21 costs when you're considering what would have happened in the
22 absence of a subsidy, in the absence of a mitigation strategy,
23 right?

24 You have customers who call and they're so mad at you
25 that they want to terminate the relationship. And I want to come

1 up with a value that would attach to that happening, right? And
2 when someone goes, when someone churns because they're that mad at
3 you, you lose the whole margin on that customer, right? There's a
4 second category of --

5 BY MR. PHILLIPS:

6 Q Well, what do you mean by margins, sir?

7 A Yeah, good question. You lose the net revenues that you
8 previously used to keep that that customer was contributing every
9 month for being on a particular tier.

10 Q And did you come up with any calculation of what that
11 would be?

12 A Sure, sure. I've got two. I've got a low and very
13 conservative one that I think I start as a baseline. That's the
14 margin that was being earned on the Family Tier. That was the tier
15 that was carrying GSN previously. I should say the tier on which
16 GSN was carried.

17 And then I have a more realistic, and albeit higher
18 margin, for what the average -- what Cablevision's average video
19 customer was worth. They were contributing [REDACTED] a month, on
20 average. And then when you apply industry margins to that, you get
21 about [REDACTED] a month. It turns out to be about [REDACTED] of margin
22 contribution that just walks out the door, okay? So, that's the
23 first component. And of course that's the serious component.
24 That's the big component.

25 There's a second component. It's much smaller. But I

1 don't want to ignore it. I know that it's not zero. And those are
2 the customers who call because they're upset, but they're not ready
3 to leave, right? You've damaged the relationship, but you haven't
4 damaged it to the extent that they're ready to leave, right?

5 And for those customers, I need a second measure of harm,
6 or second cost to Cablevision. And it's going to be smaller. And
7 those are the two cost components.

8 Q And then how did you measure that second cost?

9 A So, the way that I measured the second cost is that I
10 found something in the record that I think speaks to this point,
11 which is that Cablevision stood ready to give complaining customers
12 a subsidy.

13 And I calculated the value of that subsidy, which is how
14 much money [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

19 And that number comes out to be a little over [REDACTED] a month.
20 Again, this is very small compared to the margin loss. But I
21 wanted to attach, again, some value to this second group of
22 displeased or dissatisfied customers.

23 Q Thank you. Let me move to the other side of the
24 equation, the benefits. So, how did you measure the benefits that
25 came from the decision to put GSN up on the Sports Tier?

1 A Right. And here there's two categories of benefits that
2 I considered. The first and most obvious is that when you tier a
3 network, when Cablevision tiers a network, it's relieved of having
4 to pay the license fees associated with that network on the broader
5 tier. And so this one's pretty easy. I don't know if there's a
6 lot of controversy here. It's in the record. Cablevision saved
7 about [REDACTED] a month in license fees from moving GSN to the
8 Sports Tier. That's the first component. That one's easy.

9 The second component that I considered, but ultimately
10 did not use for this run through the analysis -- remember, we're
11 doing this run with the assumption of no mitigation strategies --
12 is the possibility that Cablevision was able to induce some of its
13 customers to take the Sports Tier, and then to pay for it
14 voluntarily on their own. That is, they would be making new
15 contributions to Cablevision.

16 The problem with this one is, again, when I do an
17 analysis of how many new Sports Tier customers were generated as a
18 result of the tiering, I find that the number that you get, which
19 is about [REDACTED] new Sports Tier subscribers associated with the
20 tiering, can be almost fully explained by the number of customers
21 who got a subsidy: [REDACTED]. In other words, but for the subsidy, in
22 the absence of the subsidy, it is my best estimation that
23 Cablevision would not have generated any Sports Tier subscribers
24 who were willing to pay \$7 a month just to watch GSN.

25 Q And this is under your first runthrough, without taking

1 to account the subsidy, on the profit sacrifice and net profit
2 sacrifice test?

3 A Correct, correct. We're going to go back and revisit
4 that one again in the presence of a subsidy.

5 Q So, when you run this analysis, without mitigation,
6 though the profit sacrifice test, what do you find?

7 A Right. So, what you find is that, under almost under any
8 parameterization that I can come up with on the cost side of the
9 ledger, you get costs that exceed the benefits. And for that
10 reason, I conclude that Cablevision incurred a profit sacrifice
11 from the tiering episode.

12 Q When you apply the second test, what you call the net
13 profit sacrifice test, what did find there?

14 A I come to the same conclusion, that Cablevision would
15 have been even better off had it tiered its own relative to tiering
16 GSN.

17 Q And why is that?

18 A It's because you -- what happened, unfortunately, for
19 Cablevision, is the reaction among GSN loyalists was very intense.
20 You know, we have on the record on the order of [REDACTED] complaining
21 phone calls. And my estimation of what would've happened had they
22 tiered their own networks -- and their own networks are lovely
23 networks, I don't mean to disparage when I say this -- but in my
24 estimation they wouldn't have generated the same outcry that was
25 generated with GSN, with tiering GSN.

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1 In other words, it would've been more profitable, on a
2 net basis, to have retiered their own networks.

3 JUDGE SIPPEL: Which ones?

4 THE WITNESS: I do this for WE tv and Wedding Central,
5 Your Honor.

6 JUDGE SIPPEL: Wedding Central's gone, isn't it?

7 THE WITNESS: It's gone, but I do the net profit for
8 both.

9 BY MR. PHILLIPS:

10 Q Was it gone at the time the tiering decision was made?

11 A No. No.

12 Q So, let's move now -- and thank you for that analysis.
13 I'd like to move now to the analysis that takes into account the
14 [REDACTED] subsidy that got paid for people when they called to
15 complain.

16 A Sure. So, now we're moving to a slightly more
17 complicated analysis. This one tries to accommodate the mitigation
18 strategies. And, to me, what matters now, Your Honor, is can you
19 induce enough [REDACTED], right? And I'm talking
20 about permanently induced. [REDACTED]

21 [REDACTED]. Can you induce enough of them so as to offset
22 any losses from churn, right?

23 This is a new and related analysis in the presence of --
24 and this analysis, by the way, I had done in my prior testimony.

25 JUDGE SIPPEL: Prior, you mean your prior testimony in

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1 this case?

2 THE WITNESS: Correct.

3 JUDGE SIPPEL: I understand that.

4 THE WITNESS: It came in as a rebuttal to something that
5 Mr. Orszag had done.

6 JUDGE SIPPEL: All right. Well, now, are these permanent
7 -- when you say permanent Sports Tier customers, are they the ones
8 that -- so, they're paying the fee. They're paying the extra fee
9 to get on the Sports Tier.

10 THE WITNESS: [REDACTED]. What
11 you're hoping for --

12 JUDGE SIPPEL: [REDACTED].

13 THE WITNESS: What you're hoping for is that, through
14 some inertia, that a customer [REDACTED]
15 [REDACTED], then will
16 stick around thereafter and start making contributions on his or
17 her own. That's what you're hoping for, right?

18 JUDGE SIPPEL: I know just what you're saying. Okay.

19 MR. PHILLIPS: So, Dr. Singer, once you take into account
20 the subsidy, what did you find?

21 MR. COHEN: Your Honor, may I object? This is not in his
22 testimony. We made an in limine motion, and we said that his
23 testimony raised new rebuttal for us. Now this is beyond our
24 motion. What is now being referred to as the new analysis --
25 because Dr. Singer testified today and testified in his report that

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1 his view as an economist is that it was wrong to perform an
2 analysis with mitigation. He said that today. And that's his
3 interpretation --

4 THE WITNESS: That's not my testimony.

5 MR. COHEN: Please, sir.

6 THE WITNESS: Okay. Well, that's not my testimony.

7 MR. COHEN: Okay. He said it's his interpretation of the
8 D.C. Circuit. He did not do the analysis in this report with the
9 mitigation that he's now addressing. And there has to be a point
10 at which his testimony is locked down.

11 JUDGE SIPPEL: Let's let the lawyers handle this.

12 THE WITNESS: Okay, sorry. Okay, go ahead. I do the
13 analysis both ways. But, go ahead.

14 MR. PHILLIPS: Well, did you --

15 JUDGE SIPPEL: Should we excuse Dr. Singer while you hash
16 this out?

17 MR. PHILLIPS: Well, Your Honor, I thought --

18 JUDGE SIPPEL: I mean --

19 MR. PHILLIPS: He did the analysis both ways. This was
20 in his report. He did this analysis. It wasn't in the report that
21 was before the D.C. Circuit opinion. It was in there when he came
22 back afterwards. He's been deposed on this issue. It's in his
23 testimony here.

24 There's no -- they've had this for a long time. It is an
25 amplification in light of the D.C. Circuit opinion. And this is

1 exactly what was going on in the in limine motion, Your Honor,
2 where Your Honor said you'd like to hear the testimony.

3 JUDGE SIPPEL: Well, wait a minute. Let's excuse Dr. --

4 THE WITNESS: I would prefer that, Your Honor.

5 JUDGE SIPPEL: I'm sorry, sir, but these things do
6 happen.

7 THE WITNESS: Sure. No.

8 (Witness excused.)

9 JUDGE SIPPEL: Thank you.

10 THE WITNESS: Thank you.

11 JUDGE SIPPEL: I think we can close that door, too. I
12 think this air conditioning is working.

13 MR. COHEN: It's actually working today.

14 MR. PHILLIPS: It does feel good.

15 JUDGE SIPPEL: It's amazing what you can get done what
16 you kick somebody. Okay.

17 Now, I'm totally befuddled. It sounds to me like he's
18 saying two entirely different things.

19 MR. COHEN: Well, let me let Mr. Phillips lay out why he
20 thinks this is not a new analysis. And if he persuades me, I'll
21 withdraw the objection. But I think it's a new analysis.

22 MR. PHILLIPS: It is a new -- I'll concede to you, Mr.
23 Cohen, that it's a new analysis as of after the D.C. Circuit
24 opinion. But it is in the 2014 supplemental report, which you,
25 because I sat there through all of it, you very thoroughly and

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1 effectively cross-examined Dr. Singer about, you know, at the last
2 deposition we had several months ago. It's in there.

3 It wasn't in the one before the D.C. Circuit. But as
4 Your Honor knows, we kind of took a break after the D.C. Circuit
5 came out to get new evidence and new testimony in which we would
6 examine the way the D.C. Circuit had laid out the tests. So Dr.
7 Singer did that --

8 JUDGE SIPPEL: Well, we also wanted to see if they had en
9 banc review.

10 MR. PHILLIPS: Yeah, and we pushed on that pretty hard,
11 Your Honor. But, so, that's what we did. It was in the
12 supplemental report that was done in 2014. And --

13 MR. COHEN: Can you show me where? Let me explain my
14 problem, Your Honor. He's had, as we said in the in limine motion,
15 multiple iterations of this testimony. There was something like a
16 profit-loss analysis done in his first testimony, in response, in
17 response to Mr. Orszag's testimony, right?

18 In that testimony, he said that one of the things that
19 you have to take into account, by way of mitigation, right, of the
20 losses, is that Cablevision would sign up new subscribers to the
21 Sports Tier, right? And he gives them some credit for it. The
22 D.C. Circuit opinion comes down, and we'll talk about that in his
23 cross-examination, but, you know, he's testified about it. And he
24 says, "I read the opinion as not allowing me to take mitigation
25 into account." And the analysis that's set out beginning at

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1 Paragraph 81 in his report, which is the net profit sacrifice test
2 on Page 51, is without mitigation.

3 And what he says in Paragraph 82, is the role of the cost
4 to the VICO, that's the vertically integrated cable operator, of
5 mitigation strategies seems to be outside the scope of the original
6 test as contemplated by the D.C. Circuit.

7 And he runs through this cost-benefit analysis and the
8 net profit in the net profit test that he does. And he leaves out
9 mitigation. He knows he's going to get cross-examined on it, and
10 now he says, "I've run it two ways." He didn't run it two
11 consistent ways, he ran it one way.

12 MR. PHILLIPS: Mr. Cohen, he ran it both ways. And
13 indeed, I remember painstakingly how you cross-examined him on this
14 in March. I don't have the reference right here in front of me.
15 Ms. Wu's going to get it. But you painstakingly did it, because
16 the entire discussion, the entire sort of miscomprehension of what
17 you think he testified to with respect to goodwill, was part of
18 this analysis. And you cross-examined him on it. And now we want
19 to offer the testimony on it. There's no surprise here, sir.
20 You've been looking at this for a long time.

21 MR. COHEN: So, show me where in --

22 MR. PHILLIPS: Well, I don't have the report in front of
23 me. But my colleague has gone to get it.

24 MR. COHEN: No, no, no. In his testimony, Your Honor.

25 JUDGE SIPPEL: In his testimony?

1 MR. PHILLIPS: This testimony?

2 MR. COHEN: Yes, where is it in his testimony? If it's
3 in his testimony, I'll withdraw my objection, as I've been saying
4 all along.

5 MR. PHILLIPS: Just give me a minute.

6 MR. COHEN: Take your time. And if you want to take a
7 break, if Ms. Wu wants to get it, I'm not trying to put you on the
8 spot, Mr. Phillips. It's a huge report.

9 MR. PHILLIPS: Yeah, no, I know. And my apologies that
10 I don't have it line for line memorized.

11 JUDGE SIPPEL: Well, I'm glad the Supreme Court didn't
12 grant cert.

13 (Laughter.)

14 JUDGE SIPPEL: Let's take 10 minutes.

15 MR. PHILLIPS: Okay. Thank you, Your Honor.

16 JUDGE SIPPEL: I'll add two more minutes. Let's make it
17 12 minutes.

18 MR. PHILLIPS: Thanks, Your Honor.

19 MR. COHEN: Thanks, Your Honor.

20 JUDGE SIPPEL: We're off the record.

21 (Whereupon, the above-entitled matter went off the record
22 at 10:26 a.m. and resumed in Closed Session at 10:35 a.m.)

23 JUDGE SIPPEL: Now, where do we stand?

24 MR. PHILLIPS: Well, Your Honor, we believe that -

25 JUDGE SIPPEL: Actually, let me just say this for the

1 record. Dr. Singer is back on the stand, so he's in the courtroom.

2 MR. PHILLIPS: We believe that this is contained in,
3 among other places, paragraphs 76 and 77 of his testimony that just
4 got admitted. I think we have a compromise that we can go forward
5 with which is, if I --- which is the following question.

6 DIRECT EXAMINATION

7 BY MR. PHILLIPS:

8 Q So, Dr. Singer, before the net profit sacrifice test, can
9 you tell me what you did to take into account the subsidies?

10 A Sure, so the calculus changes now a bit. And as I was
11 describing, what you want to do now is to see if you can induce --
12 if Cablevision [REDACTED]

[REDACTED]
[REDACTED], they will be making positive contributions, so this is
15 a real benefit.

16 The benefit is small because you're getting about [REDACTED]
17 a month in revenues, newfound revenues from these paying
18 subscribers, but you're paying license fees on the order of about
19 [REDACTED]. So you're making a little under [REDACTED] a month, but this is
20 a real benefit, and this benefit must be compared to the loss
21 margin associated with the churning customers in the presence of
22 the subsidy, right?

23 Now, my best estimate of the churning customers in the
24 presence of the subsidy was between [REDACTED] and [REDACTED], right?

25 MR. PHILLIPS: I'm sorry, stop there and just explain

1 that for a second.

2 JUDGE SIPPEL: Let me get that number again first.

3 THE WITNESS: Sure, [REDACTED] to [REDACTED].

4 BY MR. PHILLIPS:

5 Q And what does that represent, sir?

6 A That's my best estimate of the number of Cablevision
7 customers who churned because of the tiering episode despite the
8 presence of the subsidy. In spite of the presence of the subsidy,
9 okay?

10 Remember, I'm doing this iteration with the assumption of
11 mitigation strategies in the presence of the subsidy. So even in
12 the presence of the subsidy, I'm estimating between [REDACTED] and
13 [REDACTED]. Now, those are the losses.

14 The problem for Cablevision is that those losses entail
15 big margins, big -- those [REDACTED] to [REDACTED] defecting customers
16 generate losses that swamp the minuscule gains that are being
17 created by the addition of the sports tier subscribers.

18 By my estimation, even if you use the conservative margin
19 of [REDACTED] that attaches to the family tier, you would need [REDACTED]
20 times the number of newfound paying sports tier customers in order
21 to offset the loss from churn. But in reality, that ratio turned
22 out to be something like two times in particular.

23 MR. PHILLIPS: Can I stop you there?

24 JUDGE SIPPEL: You want -

25 THE WITNESS: I'd like to finish this point, sir.

1 JUDGE SIPPEL: All right, go ahead.

2 MR. PHILLIPS: The judge -

3 JUDGE SIPPEL: I'd like to hear him. I just want to hear
4 him out.

5 BY MR. PHILLIPS:

6 Q Oh, go ahead, I'm sorry.

7 A I just wanted to tie a bow on the ratio and what you
8 needed to get and what they actually got. They needed to get a
9 ratio of [REDACTED] to one of paying sports tier subscribers to churning
10 customers. By my best estimate, the ratio was around two. The
11 denominator I've talked about ad nauseam already, which is the
12 [REDACTED] to [REDACTED] churning.

13 The numerator, I just want to -- it takes a second. But
14 remember, we started off with [REDACTED] subsidized subscribers on the
15 sports tier. [REDACTED]

16 [REDACTED] the last time that I got to check in on
17 where it stood, you had roughly [REDACTED] paying sports tier
18 subscribers that were new and could be attributed to the tiering
19 episode.

20 I understand through other testimony that's come into the
21 record that that number is even less and was falling over time.
22 But let's just stay with the [REDACTED]. That, unfortunately for
23 Cablevision, is nowhere near [REDACTED] times the number of churning
24 customers that were induced because of the episode.

25 Therefore, I can infer through this profitability

1 analysis in the presence of mitigation that Cablevision again
2 incurred a loss from tiering GSN.

3 Q I just want to spell out this [REDACTED] times number for a
4 second to make sure we understand it. And I think you've more than
5 adequately explained the sort of aside of the loss of the net
6 revenue when a customer churns and leaves Cablevision. Where are
7 you getting -- what do you calculate the benefit to Cablevision of
8 each new sports tier subscriber after the subsidies went out?

9 A Yeah, that's the [REDACTED]. So that's the -- that's if the
10 customer continues to stay on the sports tier after the subsidy
11 expires and make contributions, they're contributing to the bottom
12 line about [REDACTED] per month, which is something, but it's small in
13 comparison to the margin loss associated with the churning
14 customers.

15 The margin loss, even under my most conservative
16 assumption, is [REDACTED] a month. So [REDACTED] over [REDACTED] implies that you
17 need about [REDACTED] times as many newfound paying sports tier
18 subscribers to make this thing work, and they just didn't get it.
19 They couldn't get those customers to stick. Too many of them
20 peeled off after the subsidy ended.

21 Q So, Dr. Singer, what's your take away from this analysis?

22 A My take away is that both without considering mitigation
23 and with considering mitigation, I conclude that Cablevision most
24 likely incurred a loss as a result -- in a downstream distribution
25 division, as a result of the tiering episode.

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1 MR. PHILLIPS: Now, I want to pause for a second.

2 JUDGE SIPPEL: I'm just glad, so glad, that I'm an avid
3 reader of Paul Krugman and his New York Times column so I can
4 understand this better. Well, he's an economist. I'm not inviting
5 comment on it.

6 THE WITNESS: We'll have to debate his policy
7 prescriptions for Greece next, but go ahead.

8 BY MR. PHILLIPS:

9 Q Dr. Singer, you've been criticized by Cablevision and its
10 expert for use of something you've called good will in your
11 calculations. Can you tell me what you mean and when you've used
12 "good will" in your analysis?

13 A Sure, so you remember, Your Honor, I talked about two
14 different types of costs that I wanted to come up with. First was
15 the cost associated with someone who calls and is so angry that
16 they would leave in the absence of a subsidy. That was the easy
17 one.

18 The harder one is this notion of what do you do about the
19 customer who calls and complains but didn't get a subsidy? That is
20 they didn't convince Cablevision that they were really serious
21 about leaving. There's still something -- there's still a bad
22 taste in their mouth, and relations have been frayed, and I want to
23 attach a value to that.

24 And I think that there is a nice value in the record that
25 speaks to that which is what Cablevision was prepared to pay for

1 those customers who complained [REDACTED]
2 [REDACTED] and that's the [REDACTED].

3 Q Now, sir, how many called -- how many can this apply to?
4 How many people called and complained but didn't leave?

5 A So you would take the [REDACTED] --- I'm doing this by the
6 seat of my pants. It would be the [REDACTED] minus roughly the [REDACTED]
7 that got the subsidy. I can't do that, but it's a little less than
8 [REDACTED] people.

9 Q And that's where you applied this factor to, correct?

10 A I applied this factor, correct.

11 Q Now, why did you choose to apply the amount that
12 Cablevision would have paid in the subsidy to this value?

13 A Right, right, because what Cablevision is doing when it
14 mitigates a harm this way -- and Cablevision, you know, is no
15 different than a law firm who gets a phone call from a client who
16 says that the bill is a little too high, or a restaurant owner who
17 gets the, you know -- who sees a couple at a table and they call
18 the manager over.

19 But what's happening is that the call indicates that
20 there has been some harm to the relationship. And at that point,
21 as an economist, what we would describe this as is it's an
22 intangible loss. It's an intangible harm at that time, right? The
23 conversion of the intangible harm to a tangible loss is what
24 happens when they go to mitigate.

25 When the law firm writes down its bill, it's converting

1 an intangible loss at that time into a tangible loss, hopefully
2 something that's more manageable and preserves the relationship.
3 When the restaurateur offers the free dessert, or the free glass
4 of wine, or, "Next time you come, the appetizer is on me," what he
5 or she is doing is converting that intangible harm into a tangible
6 loss.

7 And likewise, when Cablevision stands ready to give a
8 subsidy to a customer who's calling and complaining, what they're
9 doing is they're putting a dollar value on their way to patch
10 things up. This is their conversion of an intangible loss to a
11 tangible harm. It was a number in the record and I thought that it
12 informed exactly what I was looking for.

13 Q So, Dr. Singer, now, is this like the same concept as
14 good will under the generally accepted accounting principles under
15 GAAP? Is that what you're talking about?

16 A I don't think so, but I profess I'm not a GAAP accounting
17 expert. I'm a mere economist, and you know, economists and
18 accountants don't always get along. But I think that what the
19 accountants are doing might be related. But no, I was thinking
20 about this from an economics perspective, this notion of the
21 conversion of an intangible loss into a tangible dollar figure that
22 hopefully could be managed and preserve the relationship going
23 forward.

24 Q Have you addressed this concept before, sir?

25 A You know, I went back and I was looking through prior

1 reports for the word "good will" in preparation for this, and I did
2 find that in my most recent MASN testimony -- this was for the
3 Baltimore Orioles in 2014, I was asked to measure the harm to good
4 will of the fan base if the television territories were no longer
5 unified but became bifurcated instead.

6 Q And have you ever written about this issue?

7 A I've written about it in a white paper. I went back and
8 I saw that in a paper again in 2014 that I co-authored with Bob
9 Litan on behalf of a firm called the Patent Utility, we were trying
10 to estimate the value of certain intangibles, and good will came up
11 in that estimation as well.

12 Q You just mentioned intangibles, sir. Could you describe
13 for the court your experience at valuing intangibles?

14 A Sure, I think that as an economist in my field, I'm
15 valuing intangibles all the time. I mean, I've written about it.
16 I testify about it. I just worked for Apple in a proceeding
17 against a music -- musicians in Canada that -- where we had to
18 value intangible property. I've worked in the pharmaceutical
19 industry trying to value IP rights. It's something that I do and
20 I do quite often.

21 Q How important was this concept, was the measurement of
22 this loss attributed to the nearly [REDACTED] people who called but
23 didn't churn? How important was that to your analysis here, to
24 your conclusions?

25 A It's really not very pivotal, and the reason why, Your

1 Honor, is again, it's a very small number in the scheme of things.
2 Remember, it's the -- you know, in certain scenarios, I'm attaching
3 either a [REDACTED] loss for each churning customer or up to a [REDACTED]
4 monthly margin loss, right? I do it -- I do several iterations
5 letting this parameter vary.

6 In comparison, the loss that's being attached to what
7 we're referring to here as good will loss is on the order of [REDACTED]
8 a customer. So it turns out it doesn't really tip the calculus in
9 a very important way. For example, when we do the iteration with
10 the more realistic and higher margin of [REDACTED] a month, you don't
11 even need good will for the calculus to tip in favor of a profit
12 sacrifice.

13 JUDGE SIPPEL: Tip in favor of a profit sacrifice. We're
14 talking about getting into a negative result.

15 THE WITNESS: Correct, and I'll just -- can I restate and
16 maybe --

17 JUDGE SIPPEL: You can.

18 THE WITNESS: So what we -- we had this ledger of costs
19 and benefits, and this is when we do it without mitigation. We've
20 got on the costs -- on the benefits side of the equation, remember,
21 they're getting to save [REDACTED] a month. But looking for costs to
22 put on the other side of the ledger to see if we can tip the scale
23 in favor of it being a profit sacrifice. And what I'm telling you
24 is that when you use the more realistic, albeit higher, margin
25 associated with losing a customer, that's the [REDACTED] per month --

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1 JUDGE SIPPEL: Right.

2 THE WITNESS: Right, that by itself, when attached to the
3 would-be churners, is enough to tip the scale in favor of a profit
4 sacrifice. So the question was, "How important is good will to my
5 analysis?" I want to include it.

6 I know that the harm that attaches to a customer who
7 bothers to call you and complain, right, is not zero. There is a
8 harm there. So I don't mean to suggest it's not important. I want
9 to attach a value to it, but it's not pivotal to the finding that
10 this conduct entailed a profit sacrifice.

11 JUDGE SIPPEL: And you gave me [REDACTED] per month as
12 profit realized in the tiering?

13 THE WITNESS: That's the benefits side of the ledger.

14 JUDGE SIPPEL: Benefits.

15 THE WITNESS: Benefit side of the ledger.

16 JUDGE SIPPEL: What about --

17 THE WITNESS: That's the -- okay.

18 JUDGE SIPPEL: Is there a number to put on the other
19 side?

20 THE WITNESS: Yeah, I don't have it memorized, but as
21 soon as you get over [REDACTED] right -

22 JUDGE SIPPEL: Ballpark.

23 THE WITNESS: Oh, you have to do the math. It's [REDACTED]
24 times the number -- I can tell you. Are you ready? It's [REDACTED]
25 times [REDACTED]. That's one scenario that puts you over the [REDACTED] where

1 [REDACTED] is the number that would churn in the absence of the subsidy.

2 BY MR. PHILLIPS:

3 Q Did you treat this loss, this intangible loss,
4 indefinitely in your analysis when you do this equation?

5 A No, I did not.

6 Q Okay, can you describe that for me?

7 A Sure, so what I'm doing in this calculation is, just as
8 we wrote it down on the paper for the judge, is I want to do this
9 on a monthly basis, largely for ease of exposition. You could, if
10 you really wanted to get fancy, start discounting these cash flows
11 and try to come up with a relevant window for analysis. But I
12 think a short term window is appropriate, and for that reason I
13 picked to do it on a monthly basis.

14 Now, I will freely acknowledge that at some point into
15 the future these good will losses that I've attached diminish over
16 time. But on the other hand, on the other side of the ledger, the
17 benefits that we talked about attaching to newly created sports
18 tier subscribers are going, as we see, going to diminish over time
19 as well.

20 So I think at the end of the day, what the question
21 really begs is what's the relevant window for analysis? And
22 unfortunately, D.C. Circuit doesn't tell us, you know, "Use three
23 months." But I think that my best -- when I read the Circuit and
24 when I think about the relevant calculus here, I think the relevant
25 window for analysis is a fairly short term one.

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1 Q Let me move to a different subject for you for a second,
2 Dr. Singer. Cablevision and its expert have also challenged your
3 assumption about the fraction of subsidized customers who would
4 have churned in the absence of the subsidy. Can you address that
5 for me, sir?

6 A Sure, sure, I can. There is one iteration. You can call
7 it my baseline iteration. I'm just adding a term. It's the first
8 iteration I go through, but I do this several times performing
9 sensitivity analyses, in which I assume that all [REDACTED] of the
10 subsidized customers would have defected in the absence of a
11 subsidy, right? That is if they had no plan in place, these [REDACTED]
12 were ready to go.

13 Now, let me defend it and then tell you why it's not
14 necessary. I want to defend it by saying that Cablevision made the
15 same estimation when it decided who to give the [REDACTED] subsidies to
16 as to the likelihood of defection, right? And my reading of the
17 record is that, and my understanding of economics suggests that
18 they had some measure in their head of when to give a customer a
19 subsidy, right?

20 Not all [REDACTED] callers got the subsidy. Only [REDACTED] got
21 a subsidy. Presumably, you needed to trigger something in their
22 head. They don't have an economist on hand, but there's a
23 prediction model in the back of their head.

24 And when that hits a certain high enough level that the
25 customer is really, really upset, we're going to give it the

1 subsidy. So I'm basically using the same predictive model that
2 Cablevision used as to who to assign subsidies to as to who I'm
3 going to predict would have departed in a world without the
4 subsidy.

5 Now, having defended it, I also want to say that it is
6 not necessary to generate a profit sacrifice to assume that all
7 [REDACTED] of the subsidized customers would have left. That math that
8 we just wrote down, Your Honor, the [REDACTED] versus --

9 JUDGE SIPPEL: I got [REDACTED].

10 THE WITNESS: Right, so there you go. We don't need to
11 get -- and I've done this math, and this is very straightforward.
12 Of the [REDACTED] customers that I estimate would have defected in the
13 absence of the subsidy, there's a base that comes from my churn
14 model, which is [REDACTED] would leave no matter what. We're really
15 talking about the [REDACTED].

16 What fraction of the [REDACTED] are needed to defect in order
17 to tip the calculus? And it turns out you only need about 50
18 percent because you only need about half of those [REDACTED] to defect
19 in a world without a subsidy in order to tip the calculus to a
20 profit sacrifice.

21 So the notion that I need to assume that all [REDACTED] of the
22 subsidized customers would have defected in a world without the
23 subsidy is just not true, and I demonstrate that in my report.

24 BY MR. PHILLIPS:

25 Q One little cleanup, Dr. Singer. We've been talking about

1 -- when you were talking about your tests, you talked about the net
2 profit sacrifice test. Is that the net benefit test that we've
3 been using and that's used in the D.C. Circuit? Is that the same
4 thing?

5 A I think that both of my analyses, the analysis with
6 mitigation and without mitigation, form the profit sacrifice and
7 the net profit sacrifice test envisioned by the D.C. Circuit.

8 Q Okay, and the test that is not the profit sacrifice test
9 is the test that you're calling the net profit sacrifice test,
10 correct?

11 A Those are the two flavors the D.C. Circuit offered up,
12 correct.

13 Q So what do you take away from your analysis on the net
14 profit sacrifice -- on all of these profit sacrifice tests? Let's
15 put it that way.

16 A Sure, sure, the tests corroborate this -- we use fancy
17 words -- this prior that we had, as an economist, this belief going
18 in when we look at how the rest of the industry is behaving,
19 vis-a-vis, GSN, that something is wrong. Something is wrong.
20 They're defying the convention. And then when you actually dig in
21 and look at the costs and the benefits that were incurred from the
22 tiering, it appears as if Cablevision sacrificed a downstream
23 profit.

24 And the most reasonable inference to take away from this
25 is that no rational firm would do that. No rational firm would do

1 that unless there was some offsetting benefit. And the offsetting
2 benefit here is that they would get a lift, and they indeed got a
3 lift, in their viewing of WE tv.

4 Q If you take your conclusion from analyzing the
5 profitability of the decision to put GSN on a tier, and you look at
6 that through the prism of Cablevision's peers, what do you come --
7 what's your conclusion?

8 A I think that the peers have all performed the same
9 calculus that I've tried to perform, right, and they've come to the
10 conclusion that it is profit maximizing to carry GSN broadly.

11 Q Let me turn to a different subject. As I said, I wanted
12 to just hit the highlights of your report, and it has just taken
13 longer than I had hoped, but I'm still trying to move quickly. I'd
14 like to talk about harm for a second, Dr. Singer. So did you look
15 at the question of whether GSN suffered any harm as a result of
16 Cablevision's putting it up on a sports tier?

17 A I did, yes.

18 Q Can you tell me what you did?

19 A Sure, my report lays out several different aspects of
20 harm, and maybe I'll just highlight two of the ones that are going
21 to be easiest to quantify and are the most obvious. I mean, the
22 first is that [REDACTED] benefit to Cablevision of the tiering. Of
23 course, that's just the flip side of the harm to GSN. They're out
24 [REDACTED] a month because of this in license fees.

25 But also, I've estimated that the short term advertising

1 loss comes out to roughly another [REDACTED] a month from losing this
2 many subscribers --- and I won't take you through all of that.

3 JUDGE SIPPEL: How much per month was that?

4 THE WITNESS: [REDACTED] is my estimate.

5 BY MR. PHILLIPS:

6 Q Was this harm limited to the New York area?

7 A No, it was not.

8 Q Can you -- did you look to see whether it was limited to
9 the New York area?

10 A I did, and so the hypothesis here is that having a hole
11 in New York is special in a good or bad way depending upon your
12 perspective.

13 Q I'm sure Mr. Cohen and I will stipulate that New York is
14 special.

15 A But it's also special -- the hypothesis that I have going
16 in to do my empirics is that selling advertising to advertising
17 executives, many of whom live in the New York City area, is
18 frustrated by the virtue of not being able to be seen in New York.
19 And so, that's just a hypothesis.

20 What I wanted to measure was whether the impact of the
21 tiering negatively affected GSN's ability to sell national
22 advertising. And so, I was able to obtain from GSN their
23 advertising sales going back several quarters, and I built a
24 regression model that tried to predict what would advertising have
25 looked like in the absence of the tiering, or to say it

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1 differently, what was the effect of the tiering on GSN's
2 advertising?

3 And I looked at two types of accounts that are sold
4 nationwide. These are called general sales and infomercials. And
5 I found that the effect was statistically significant and large,
6 and on the order of about a [REDACTED] hit, a decline, that can be
7 attributable to the tiering episode.

8 And for that reason, I believe that corroborates this
9 hypothesis that losing New York actually generates a bigger blow
10 than just what New York would account for on a pro rata basis.

11 Q So how much of GSN's audience is accounted for by the
12 Cablevision footprint pre-tiering? I'm sorry, my questions are
13 sloppy. You say you got a [REDACTED] decline in advertising on
14 your regression analysis caused by the tiering, correct, sir?

15 A Correct, and then I compared --

16 Q I'm trying to compare that to what we would expect by the
17 loss of the Cablevision audience.

18 A Right, and what we were expecting was a loss on the order
19 of about six percent, right, and that's what I said. If it was on
20 a pro rata basis, you would expect a loss of about [REDACTED].
21 But in fact, the econometrics is showing that you're getting a loss
22 substantially larger than that.

23 MR. PHILLIPS: Your Honor, at this time, as I said, I've
24 not tried to thoroughly cover Dr. Singer's report, which is fairly
25 comprehensive and covers lots of different subjects, but just to

1 hit some highlights, and I'm done with my highlights. And I would
2 invite Mr. Cohen to take over, or Your Honor, or whomever wants to
3 go next.

4 JUDGE SIPPEL: Oh, I think Mr. Cohen's going to go next.
5 I have that feeling. But I just want to assure Dr. Singer, who got
6 upset, I think, with my Paul Krugman comment, I always then go to
7 the Wall Street Journal --

8 (Laughter)

9 JUDGE SIPPEL: -- and I get the balance. I know I've
10 seen you in the Wall Street Journal.

11 THE WITNESS: Well, thanks. Yeah, I get lucky every once
12 in a while.

13 JUDGE SIPPEL: Well, there you go. Paul Krugman just has
14 a better -- I don't know what his deal is, but it's a pretty good
15 deal. Okay, enough, enough, let's go.

16 MR. COHEN: Do you want to start, Your Honor? Actually,
17 let me pass out the books.

18 JUDGE SIPPEL: Why did I think that was going to happen?

19 MR. COHEN: Just a lucky guess. I didn't think Dr.
20 Singer would get away with that slim little volume.

21 JUDGE SIPPEL: This is how Mr. Cohen looks at the weight
22 of the evidence. This is why I have my Ibuprofen with me.

23 MR. COHEN: And I might be borrowing some. Dr. Singer,
24 you can grab some water and then we'll start.

25 THE WITNESS: Oh, we're good. I think we're good.

1 MR. COHEN: Okay. Now, how are you, sir? We've met at
2 this deposition a couple of times.

3 THE WITNESS: Yes.

4 MR. COHEN: Now, I'm going to come back to good will
5 later, but by the way, the courtroom, I think, could be open for
6 the first -- certainly for a good part of this, and I think it's
7 still closed.

8 CLOSED SESSION ENDS

9 OPEN SESSION STARTS

10 CROSS EXAMINATION

11 BY MR. COHEN:

12 Q I'm going to come back, sir, to good will later in the
13 day. But you testified today that you had, in prior reports -- you
14 discovered that you've actually given some testimony to good will,
15 right?

16 A Correct.

17 Q Now, we covered that very subject at your deposition on
18 March 6, 2015, right?

19 A You asked me if I could remember any.

20 Q Well, every question at a deposition can only ask what
21 you remember at the time, right?

22 A Sure.

23 Q Could you turn to your 2015 deposition? It's on -- it's
24 right at the beginning. Is it not in your books? Okay, then let
25 me hand it out. You can't turn to it at all, okay. And turn to

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1 the first page which is actually Page 321, because we started the
2 deposition at 2012 and 2013, right?

3 A Yes.

4 Q And you recall that I showed you your CV in March of
5 2015, right?

6 A Right.

7 Q And I asked you the following questions, right, at page
8 322 line 12, "In any one of the matters that you've listed in which
9 you have given expert testimony since 2005, have you offered an
10 opinion on how to quantify loss of good will?" Answer, "I can't
11 recall sitting here today. I don't want to rule it out, but I'd
12 have to think back through them. I can't recall any right now."
13 And that was true testimony of course, right?

14 A Of course it's true. It's a good answer.

15 Q And -- I didn't ask if it was a good answer. And now
16 you've remembered something. When did you remember it?

17 A I actually remembered it about a few days ago. It was in
18 the middle of the night. It occurred to me that good will may have
19 been a component of my testimony in the most recent spat between
20 the Nationals and the Orioles, and I literally went to the internet
21 at about 5:00 a.m.

22 I got out of bed and I went to the internet at 5:00 a.m.
23 I searched for it and found it on the internet, and I wrote to Will
24 and I said, "Oh, my God, I just testified on this a year ago and I
25 couldn't recall it when Jay asked me," but that happens.

1 Q So when we take a break I can find your report on good
2 will on the internet?

3 A Yes.

4 Q Okay, and did you use the same methodology for
5 calculating good will that you did in this report?

6 A No, not the same methodology, but it's the same concept.

7 Q No, I'm asking about the methodology, sir.

8 A Right.

9 Q Did you use the same methodology to calculate good will
10 in your MASN report as you did in this testimony?

11 A No.

12 Q Okay, let's put that -- we'll come back to good will
13 later. Now, one of the things you testified about right at the
14 beginning, and Mr. Phillips sort of laid out the structure of your
15 testimony, is you looked at the issue of whether or not the
16 networks were similarly situated, right?

17 A Yes.

18 Q Okay, and in connection with that, one of the things you
19 looked at is whether the networks were similarly situated from the
20 perspective of rights holders, right?

21 A Correct.

22 Q And what you say in your report is that, "We, in GSN,
23 have directly competed for programming rights for various shows,"
24 right?

25 A Correct.

1 Q And I think the number you gave is six? Do you want to
2 look at paragraph 4d of your testimony?

3 A I can just use the --

4 Q You can use your testimony.

5 A Okay.

6 Q Use your testimony, 4d.

7 A Oh, can you --

8 Q Page 5. I'll help you get there. It's a long report and
9 I have it written down and you don't, all right?

10 A Okay.

11 Q Page 5, 4d, and you say, "Although from an economic
12 perspective there should be no requirement that two networks carry
13 the same programming to be considered similarly situated, WE tv has
14 competed directly with GSN for certain programming rights." Do you
15 see that, sir?

16 A Yes.

17 Q And you use that as another piece of evidence in support
18 of your conclusion that the networks are similarly situated, right?

19 A It's supportive, yes.

20 Q Now, look at -- when you list all the shows here, that
21 you found the pitch logs -- the pitches to be overlapping, right?

22 A Yes.

23 Q Okay, and five or six?

24 A That are listed here, yes, yes.

25 Q And you're not aware of any more, are you?

1 A I'm not aware of any more.

2 MR. COHEN: Why don't you look at Exhibit 214,
3 Cablevision 214, which is in that -- what we keep referring to as
4 the big book. It's 214.

5 JUDGE SIPPEL: There's a different class of witness who
6 has taken the stand. Big book witnesses --

7 (Laughter)

8 MR. COHEN: In the large binder, Your Honor.

9 JUDGE SIPPEL: Okay.

10 MR. PHILLIPS: I hope you didn't purposefully leave this
11 print so small.

12 MR. COHEN: We tried bigger copies and they don't work so
13 well. We can ask Mr. Sperling at a break.

14 BY MR. COHEN:

15 Cablevision 214, this is the pitch log for WE tv,
16 right, that you looked at to find these overlapping shows, right?

17 A Correct, either I or one of my researchers looked at it,
18 yes.

19 Q And I understand, neither you nor Mr. Orszag did all of
20 this work by yourself. You each have help, right?

21 A Right.

22 Q So I'm not trying to draw a distinction in my questions
23 --

24 A Okay.

25 Q -- between what you did personally and what someone on

1 your staff did --

2 A Okay.

3 Q -- unless I ask you that, okay?

4 A Okay.

5 Q Just for some ground rules. And what this shows us is
6 that over a period of time beginning sometime in 2008 and going on
7 for a couple of years, there were thousands of pitches made to WE
8 tv, correct?

9 A I can't count them, but I will take your word that there
10 are a thousand in here.

11 Q There's certainly many hundreds just if you look at the
12 lines per page and the number of pages. Is that fair? It goes on
13 for 191 -- there are, let's see, there's 271 pages. There's some
14 stuff at the end, but a couple hundred pages of pitches, right, in
15 any case?

16 A Right.

17 Q And there are multiple pitches per page, so it's probably
18 in the thousands.

19 A Okay.

20 Q Would you grant me that?

21 A Over a several year period.

22 Q Right, and out of these thousands of pitches, what you
23 found is that six shows that were pitched to WE, out of these
24 thousands, were also pitched to GSN, right?

25 A Correct.

1 Q And when you say pitched to the networks, as you
2 understood it, you're not saying that the network solicited this
3 programming necessarily from the same programmers, it's that some
4 effort was made to put the programming on each of the networks,
5 correct?

6 A Right, I'm looking at this from the vantage of the rights
7 holders. My claim is -- my inquiry is do rights holders perceive
8 these two networks to be similarly situated venues for their
9 content?

10 Q And you're willing to testify that on the basis of six
11 pitches out of thousands that WE received, that rights holders
12 generally perceived WE and GSN to be similarly situated networks?
13 Yes or no if you can.

14 A I don't think that was my testimony. I don't think that
15 I said "generally perceived."

16 Q I'm asking you is it your testimony --- or is it your
17 opinion, sir, I'll ask you the question, that WE tv and GSN are
18 generally perceived to be similarly situated networks from rights
19 holders?

20 A I don't think I'd be prepared to say generally. I think
21 that with respect to certain rights holders that I've identified,
22 they are.

23 Q Six?

24 A Yes.

25 Q And do you know whether any of those six rights holders

1 -- and by the way, all you know is what you saw on this pitch log
2 for WE tv, Exhibit 214, and a couple of pitch logs that you saw for
3 GSN, right?

4 A Correct.

5 Q You don't know who solicited whom, right?

6 A Correct.

7 Q And you know when they say pitch, people are in TV
8 networks pitching their stuff to get on TV, right?

9 A Yes.

10 Q So if I'm a producer of programming and I write an
11 unsolicited letter to WE and an unsolicited letter to GSN, by your
12 count, that's an overlapping pitch, right?

13 A No, by my -- the way to get it into my count is you had
14 to register onto the pitch log.

15 Q You don't know how you get on the pitch log, do you?

16 A I don't.

17 Q Okay, and you don't know whether any of these six pitches
18 resulted in any negotiations about a show, right?

19 A I don't.

20 Q And the one thing you do know is that none of these six
21 shows actually wound up on both networks, correct, or on either
22 network?

23 A Sitting here I can't tell you what was the result of
24 these pitches, no.

25 Q Okay, well, you've looked at the programming of GSN,

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1 right?

2 A Yes.

3 Q Do you recognize any of the names of those shows as GSN
4 programs?

5 A I'd have to go back and look, but I can't tell you right
6 now.

7 Q Okay, and what about WE? Have you looked at the
8 programming of WE?

9 A Sure.

10 Q Okay, and you don't remember any of these shows appearing
11 on WE, do you?

12 A Sitting here, I can't, no.

13 Q Well, I can only ask you about --

14 A Right.

15 Q -- what you're doing sitting here.

16 A Right.

17 Q Okay, you can put that document aside. Now, sir, you've
18 concluded, have you not -- I think another one of your conclusions
19 on similarly situated is that GSN and WE have similar audiences
20 from an advertising perspective, right?

21 A Correct.

22 Q And if you look at paragraph -- just orient yourself to
23 paragraph 48 in your testimony so we can all be there, and I think
24 that's on page 30. Let me know when you're there.

25 A Yes, that's the start of the section on perception of

1 advertisers, yes.

2 Q Right, and you make the point at the end of paragraph 48
3 that ■ percent of GSN's viewers are women, right?

4 A Yes.

5 MR. COHEN: Okay, and the fact that -- paragraph 48, Your
6 Honor.

7 JUDGE SIPPEL: I got it.

8 BY MR. COHEN:

9 Q The fact that ■ percent of the viewers of GSN are women
10 is one of the things that informs your view that the networks are
11 likely viewed to be the same by advertisers, correct?

12 A It's informative, yes.

13 Q Okay, and just to be clear, you've never been in the
14 advertising business, right?

15 A Correct.

16 Q Right, you've never bought advertising from a TV network?

17 A Correct.

18 Q And you've never sold advertising, right?

19 A Just economics.

20 Q Right, and you don't consider yourself an expert in the
21 advertising business, do you?

22 A I don't want to say I'm an expert in the advertising
23 business.

24 Q Now, you know, do you not, from what you've learned at
25 least in the course of this case, and I'm sure in others, that

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1 advertisers look at more than simply male or female in determining
2 whether to place advertising, right?

3 A Yes.

4 Q They look at a variety of demographics, yeah?

5 A Multiple dimensions.

6 Q Multiple dimensions as you said, right? Income, right?

7 A Right.

8 Q And what you did is you -- did you look at the age of
9 viewers in anything that you examined in this case?

10 A I would have to look at the specifications that I used in
11 my distance analysis to see --

12 Q Okay.

13 A -- if age was one of the variables.

14 Q Okay, go back to 48 before I get to the distance
15 analysis.

16 A Okay.

17 Q We're looking at the end of 48 and do you see that you
18 footnote on paragraph -- footnote 81 that your ■ percent number
19 comes from two documents, including something called, "GSN 163"?

20 A Yes.

21 MR. COHEN: Okay, I'm hoping in your book is GSN 163.
22 There should be CV exhibits, and then behind the CV exhibits, GSN
23 exhibits. If you don't have it, I'll burn you a copy. Let me know
24 if you can find it there.

25 JUDGE SIPPEL: What's the tab number?

1 MR. COHEN: It's GSN 163, Your Honor.

2 JUDGE SIPPEL: I've got it.

3 BY MR. COHEN:

4 Q And are you with me, sir?

5 A Yes.

6 Q Okay, do you recognize this as one of the documents you
7 reviewed in connection with your testimony?

8 A I seem to recall this, or you showing it to me during the
9 deposition.

10 Q Okay, so let's just stay with this for a second, all
11 right?

12 A Okay.

13 Q Now, this is a comparison of the audiences between WE and
14 GSN, all right, for two television seasons, the '09/'10 season and
15 the '10/'11 season, all right?

16 A Yes.

17 MR. COHEN: Okay, I'm going to wait for the judge.

18 JUDGE SIPPEL: I'm with you.

19 MR. COHEN: A lot of sideways and things in this book,
20 Your Honor.

21 MR. PHILLIPS: I appreciate the fact that the numbers are
22 bigger.

23 JUDGE SIPPEL: Okay.

24 MR. PHILLIPS: Okay.

25 BY MR. COHEN:

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1 Q And just for illustrative purposes we'll just focus on
2 the '09-'10 season. Okay? And there's a number that says,
3 "Households," right? That's the total number of people who watch
4 the network, the delivered audience? Do you know that?

5 JUDGE SIPPEL: HH is households?

6 MR. COHEN: Yes.

7 THE WITNESS: That seems right. I'm of course citing
8 this for the female skew column toward the end, but, yes.

9 BY MR. COHEN:

10 Q Right.

11 A Okay.

12 Q So you're citing it for the female skew column, but in
13 fact what you can do from this data is to determine what the female
14 skew is within the demographics that advertisers look at, right?

15 A You can do finer cuts. Yes, we do.

16 Q Right. And you're aware, are you not -- I think you --
17 I know you're aware that one of the things that GSN says in this
18 proceeding is that they're target audience is women 25 to 54,
19 right?

20 A They -- they may have said that. I -- I -- I -- I don't
21 recall that precise cut, but they may have.

22 Q Okay. And I just want to make sure that we all
23 understand this data. So let's look at 2009-2010 prime time, which
24 is that first group of columns up on top. 2009-2010. Do you see
25 that?

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1 A Yes.

2 Q And this tells us that in 2009-2010 GSN had an audience
3 of [REDACTED] -- I'm sorry, that WE had an audience of [REDACTED] women 25
4 to 54, right?

5 A Yes, I see the [REDACTED].

6 Q All right. And GSN had an audience of [REDACTED], right?

7 A Yes.

8 Q And so WE had an audience that was [REDACTED] percent larger of
9 women in this demographic than GSN, right? Prime time.

10 A Prime time.

11 Q Which is the yellow line underneath.

12 A Yes, I see [REDACTED] percent. I don't know if 6:00 to 1:00 a.m.
13 is prime time, but I grant you it's -- [REDACTED] is probably [REDACTED] percent
14 more than [REDACTED].

15 Q Okay. Actually the way you have defined prime time is
16 7:00 to midnight, right?

17 A I -- I don't know if I defined prime time. I would just
18 take prime time as Nielsen gave it to me.

19 Q Okay. So would you agree with me, sir, that in every
20 daypart in every year that's listed in GSN Exhibit 163 the audience
21 of women 25 to 54 on WE is larger than the audience of women 25 to
22 54 on GSN?

23 A Well, by this table it -- it -- all of these ratios are
24 -- well, let's see. Can you state the question again, because --

25 Q Yes.

1 A Okay.

2 Q I'm trying to shortcut a little --

3 A Okay.

4 Q -- but if you want to do it one at a time, I will.

5 A No, I -- I think -- I see it. I see it. Yes. Yes, the
6 -- the -- the WE number is higher than GSN for that -- for that
7 particular cut.

8 Q And the skew numbers for GSN in the 25 to 54 range:
9 females 25 to 54, males 25 to 54, right, is lower than the overall
10 skew that you found for the network, correct?

11 A You might have to point me to which column --

12 Q Okay.

13 A -- you want me to look at.

14 Q All right. So I'll just take 2010-2011 WE tv versus GSN
15 sales prime.

16 A Okay.

17 Q What this document tells us is that GSN had [REDACTED] people
18 25 to 54, right, who watched the network, right, PE25 to 54, 2010
19 to '11?

20 A Okay.

21 Q Of that, [REDACTED] were women and [REDACTED] were men, right?

22 A Right.

23 Q So the skew, that's not a [REDACTED] percent ratio total women,
24 right? You can do that in your head and know it's not [REDACTED] percent,
25 [REDACTED] out of [REDACTED].

1 A Right, it's -- it -- it is what it is.

2 Q It is what it is. So when you gave your skew number, you
3 said the network was similarly situated because it had a ■ percent
4 skew, you were not segregating any particular audiences. That was
5 just overall for the network, correct?

6 A Well -- well, I -- I certainly was not intending to prove
7 similarly situated by citing this -- this document. It's one of
8 several documents and analyses that I performed. It just
9 corroborates my analysis, my overarching analysis.

10 Q My question is just slightly different.

11 A Okay.

12 Q My question is whether in presenting data to the Court
13 about the women skew on GSN did you do any analysis of whether that
14 skew was consistent across age ranges?

15 A Well, I tried to do something like that in my distance
16 analysis in which -- which we -- which we can get to, but I believe
17 that I looked at the -- I controlled for age as well as gender when
18 I did the distance analysis.

19 Q Well, actually in your distance analysis you controlled
20 for the age of the household and not the age of the viewer,
21 correct?

22 A I believe that's right. That's how the data were
23 presented to me.

24 Q Okay. But let's just spend a second about that.

25 A Okay.

1 Q So let's set the stage on what your distance analysis is
2 because maybe we're -- there are only a few people in the room who
3 know what that is.

4 One of the things that you did was that you tried to
5 figure out for a variety of demographic factors whether there was
6 some similarity between these networks, right?

7 A Right. The -- the -- the -- the puzzle that we have is
8 that advertisers of course are interested in more than just
9 male/female skew. They're looking at other things: income, age,
10 lots -- lots of things. And Nielsen provides for us a vector;
11 which is a fancy word, just a list of these demographic variables
12 for a whole bunch of networks. And so, what I -- what I attempted
13 to do in the distance analysis is just to see how close GSN was to
14 WE tv when you combine all of these multi-dimensional ratings into
15 a summary statistic.

16 Q Right. And what you found is that WE tv ranked [REDACTED]
17 closest, correct?

18 A Out of -- out of 100.

19 Q Out of 100 networks, right?

20 A Right. Right.

21 Q [REDACTED]?

22 A Yes.

23 Q Okay. And the variables that you included age of
24 household, correct?

25 A Correct. This was how -- this was how Nielsen presents

1 these various demographics was by household. That's the data that
2 I -- I -- I obtained for doing this analysis.

3 Q Not the age of the people who actually viewed the
4 network, correct?

5 A It -- it was at -- this -- this Nielsen cut was at the
6 household level, that's correct.

7 Q And in fact you know, do you not, from the work that
8 you've done in this proceeding that the average age of WE tv is
9 considerably -- on GSN is considerably higher than on WE, right?

10 A I think I'm familiar with that, yes.

11 Q Right. And if you had used the actual age of the
12 viewers, and they were older than the household numbers, you would
13 have gotten a distance analysis that would have showed GSN and WE
14 to be further distant, correct?

15 A It's possible. It depends on -- on the relationship
16 between Nielsen's data of household age and viewer age. Of course
17 you have some households that are made up of one viewer.

18 Q And on gender you used the head of household gender,
19 correct, in your distance analysis?

20 A Oh, I think that I did -- I did many iterations of the --
21 of the variables. I don't think that I just used one.

22 Q Okay. But the one thing you know is that you didn't
23 actually look at the age of the viewers?

24 A Not in this database. I was using household level data.

25 Q Now Mr. Orszag pointed that out to you two years ago,

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1 right, his report?

2 A Correct.

3 Q All right. You've never addressed it, is that right?

4 A I -- I don't think that I can address it because I can't
5 get the data that would allow me to -- to do that.

6 Q Did you try?

7 A I did try. I asked GSN what they had that would inform
8 me of -- of this, and this is the data that they -- that they keep
9 from Nielsen.

10 Q You think that Nielsen doesn't have data that tells you
11 the age of viewers?

12 A Oh, I think that they might. The question is would they
13 be able to produce a vector of demographic variables by network of
14 the type that we asked for so that we could perform a distance
15 analysis.

16 Q Okay. And in any case what you came up with was 15th,
17 right?

18 A Correct.

19 Q Okay. You can put that document aside. Now another
20 opinion that you have is about the overlap of audiences, right?
21 You did something called a duplication analysis?

22 A Correct, which -- correct. Correct.

23 Q Okay. And the duplication analysis tries to measure in
24 various ways -- again just to set the stage, tries to measure in
25 various ways the degree to which viewers on one network overlap

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1 with viewers on another network, correct?

2 A I think that's -- that's fair, yes.

3 Q Okay. And you did this based on Nielsen work, right?

4 A Correct. I'm -- I'm just reporting the Nielsen data back
5 without any kind of -- of refinements. These are Nielsen's
6 estimates and they're both duplication percentages.

7 Q Right. And you set that out on page 21 of your report,
8 table 3. Would you turn there?

9 JUDGE SIPPEL: Which page is that?

10 MR. COHEN: Twenty-one, table three.

11 BY MR. COHEN:

12 Q Now, and here I'm going to get into these, you list a
13 column that says "Both Duplication" and a column that says
14 "Secondary Duplication," correct?

15 A Correct.

16 Q Nielsen actually performs or gives data on three types of
17 duplication analyses, correct?

18 A Correct.

19 Q Both duplication, secondary duplication and primary
20 duplication, right?

21 A Correct.

22 Q And you have rejected the use of primary duplication,
23 right?

24 A I put it actually in the same category as the secondary,
25 right? I -- I -- I explained that both of them are subject to

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1 either small or -- or large firm bias and -- and both removes that
2 bias, which is why I think it's the best.

3 Q Right. And by the way, had ever worked with duplication
4 data before this test, or have you remembered something since your
5 deposition?

6 A I -- I don't recall having worked with it before.

7 Q Okay. So you do know that Nielsen has three categories:
8 primary, secondary and both, right?

9 A Correct.

10 Q You reject primary, right?

11 A I -- "reject" is an awfully strong word. I explained the
12 bias --

13 Q Right.

14 A -- that attaches to primary, and you have a bias in the
15 opposite direction that attaches to secondary.

16 Q Yes.

17 A And I explain why and I give an example --

18 Q Right.

19 A -- in -- in my second column.

20 Q Right, but --

21 A This is -- this one is subject to the small firm bias.

22 Q Right, but what leads you to conclude that there's an
23 overlapping audience is that WE ranked second in this both
24 duplication analysis, correct? That's the principal empirical
25 support for your conclusion with respect to audience overlap. Am

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1 I right?

2 A For this -- for this particular analysis, yes.

3 Q For this analysis.

4 A Yes.

5 Q I know you're cutting it different ways, but for the
6 duplication analysis you're relying on the fact that we is second,
7 right?

8 A Correct.

9 Q Now you would say that a network that was [REDACTED] was close,
10 right?

11 A Depends on out -- out of how many. So this is [REDACTED] out of
12 86, right?

13 Q Right. So --

14 A To me that's impressive.

15 Q Okay.

16 A You're asking me hypothetically if it was [REDACTED] out of 86?

17 Q Right.

18 A That's fairly close, but -- but I --

19 Q Okay.

20 A -- that's not the fact pattern here.

21 Q Let's look at what's [REDACTED] in this both duplication
22 analysis. is that the NFL Network?

23 A Yes.

24 Q So under the both duplication analysis that you rely on
25 that eliminates all these biases the NFL Network is the [REDACTED]

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1 closest network to GSN out of how many, 87?

2 A I think it's 85 or 86. One second. I'll tell you.
3 Eighty-five.

4 Q Okay. And you know that there are any number of networks
5 that you present in this both duplication column that are not women
6 skewing networks, correct?

7 A Correct.

8 Q Right? So the fact that you show up on a both
9 duplication analysis by itself doesn't mean that you're a women
10 skewing network, does it?

11 A No, I'm looking at audience overlap here.

12 Q Okay.

13 A It's a different analysis.

14 Q Now in the second column you submit the data on secondary
15 duplication, right?

16 A Correct.

17 Q But you reject that for a different kind of bias? That's
18 in the report. I don't want to spend a lot of time on it.

19 A Yes, I'm not -- I -- I report the results. I'm not
20 rejecting it. It -- it's high even by that measure as well, but I
21 don't like it as much because it's subject to this bias.

22 Q You don't like it as much. And it's 14th, right? Still
23 high, right?

24 A It's still -- it seems relatively high, yes.

25 Q Okay. Now although you reject secondary duplication for

1 bias and you reject primary duplication for bias, you don't report
2 in your testimony the prior duplication rankings, correct?

3 A I don't. I was actually trying to highlight the bias of
4 the secondary by -- by putting it in.

5 Q I'm just asking --

6 A Okay.

7 Q -- my question. Okay?

8 A I'm not necessarily endorsing it. I was -- I was doing
9 this as a --

10 Q You're highlighting the bias?

11 A Yes, and I give an example of this small network sampling
12 that -- that is popping up solely because it's so small.

13 Q Right. In any case, you present in this report both and
14 you present secondary, correct?

15 A Correct, but I don't cite the secondary. I'm -- I'm
16 citing that as -- as -- for -- for its bias. I'm -- I'm actually
17 citing and relying on the results of the both.

18 Q You report it in here, do you not?

19 A I report it to -- to illustrate an example of how the
20 bias works in practice.

21 Q And where does WE rank on a primary duplication basis
22 from GSN, the one analysis that Nielsen runs that you didn't
23 report? What number?

24 A I don't know.

25 Q You don't know?

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1 A Sitting here I don't recall.

2 Q Okay. Why don't you look at Mr. Orszag's testimony. It
3 will help you out. Exhibit CV 334. It's in your book as he lays
4 it out. You don't have to guess. Page 77. Let me know when
5 you're there?

6 A Seventy-seven, you said?

7 Q Page 77. Seventy-seven of one-ninety-seven.

8 A Okay.

9 Q I'm going to wait for the Judge. It's 334.

10 JUDGE SIPPEL: Three-three-four?

11 MR. COHEN: Yes.

12 BY MR. COHEN:

13 Q Okay. Now --

14 JUDGE SIPPEL: And where are we?

15 MR. COHEN: Well, page 77, Your Honor.

16 JUDGE SIPPEL: All right. I got it.

17 MR. COHEN: Okay.

18 BY MR. COHEN:

19 Q Now, Mr. Orszag lays out numbers from the same Nielsen
20 reports you used, right?

21 A Well, the first three are irrelevant because they're from
22 the perspective of WE tv.

23 Q Well, we'll come to whether they're irrelevant in a
24 moment.

25 A Okay.

1 Q All right? But he uses the -- my question, sir -- try to
2 stay with my questions.

3 A Okay.

4 Q The question was does he use the same Nielsen data that
5 you use? You've looked at this. You've studied this.

6 A He's generally using Nielsen overlap data, yes.

7 Q Okay. Turn the page actually to 78. All right? And
8 that's WE's both duplication rank from the perspective of GSN. And
9 you say he reports second just the way you do, right?

10 A With a larger -- he actually had access to a larger base,
11 out of 96, which is even more impressive. I only had 80 -- 85
12 networks.

13 Q Right. My only question, sir --

14 A Oh.

15 Q -- just stay with my questions.

16 A Okay.

17 Q My only question was he reports the same number as you,
18 am I right?

19 A Well, you were wrong then, because he's not reporting the
20 same number. He's reporting ■ out of 96.

21 Q Okay.

22 A I'm doing ■ out of 85.

23 Q Same rank?

24 A Same rank.

25 Q Okay.

1 A That's fair.

2 Q Turn back to the page before, page 77 at the bottom. The
3 primary duplication number on page 77 that you do not report is
4 that on a primary duplication basis WE ranks [REDACTED], [REDACTED], [REDACTED], [REDACTED],
5 [REDACTED], depending on how you cut it, on a primary duplication basis,
6 correct?

7 A Correct.

8 Q Now did you have any conversations with anybody at your
9 client GSN about whether in the real world they used primary,
10 secondary, both duplication, all, none? Any idea?

11 A Well, they might use it, but the question is what are we
12 trying to get at here? And I'm -- I'm trying to get at a very
13 specific question, which is how would customers -- how would GSN
14 customers think about moving to WE tv if GSN was taken away from
15 them? It's a very specific analysis --

16 Q Right.

17 A -- that is set for this context.

18 Q Don't they use it for the purpose of measuring audience
19 overlap with their competitors?

20 A They do, yes.

21 Q In the ordinary course, right?

22 A Sure.

23 Q Okay. And you've seen some of those documents, haven't
24 you?

25 A It's possible I've seen them.

1 Q Okay. Well, let me show you one. See if I can refresh
2 your recollection. I'm going to show you what we've marked as
3 Cablevision Exhibit 702.

4 (Whereupon, the above-referred to document was marked as
5 Cablevision Exhibit No. 702 for identification.)

6 MR. PHILLIPS: This is in addition to my book?

7 MR. COHEN: You're going to have to follow along with us.
8 There are always going to be additions to the book.

9 MR. PHILLIPS: Okay. Great.

10 MR. COHEN: You missed a few chapters.

11 MR. PHILLIPS: Well, I haven't been here.

12 (Laughter)

13 BY MR. COHEN:

14 Q Okay. Now have you ever seen this document before, sir?

15 A I can't recall.

16 Q Okay. Well, let me go through it with you. Now there's
17 a name on the front page. It's to Mr. Michell. Now, you know from
18 your work that Mr. Michell is in Research at GSN, right?

19 A Yes, I've actually -- I've actually interfaced with --
20 with Mr. Michell.

21 Q Okay. And in your interfaces with Mr. Michell did you
22 ask him whether in the ordinary course of GSN's work they rely on
23 primary, secondary or both duplication?

24 A I just don't recall.

25 Q Okay. Now, let's look at what he says. He says; this is

1 a memo from one of his staff to Michael, "Michael, David and I have
2 gone over the competitive set that we sent out yesterday by Jeff
3 and ran a duplication report for all those networks against GSN for
4 1Q '10 along with a handful more just to see how we look for our
5 target demos: adults and women 25 to 54, adults and women 18 to 49.
6 We have found a few more networks that pop and we'd like to discuss
7 with you regarding the next step. Please take a look at the
8 attached focusing on the columns primary duplication, the
9 percentage of GSN viewers for a given demo who also watch the
10 secondary network, and secondary duplication."

11 Do you see that, sir?

12 A Yes.

13 Q Now turn to the chart that was supplied to Mr. Michel,
14 which begins at page 4 of 7. And in examining how they compare
15 against their competitive set, GSN in the ordinary course of their
16 business, this document highlights primary and secondary
17 duplication, not both duplication, correct?

18 A It does.

19 Q Okay. And did you ever have a conversation with Mr.
20 Michell as to whether the both duplication statistics or data that
21 you rely upon is what the network relies on in the ordinary course
22 to understand what its overlap is with its competitive set?

23 A I don't recall having that conversation.

24 Q Okay. Let me show you another document.

25 MR. COHEN: I'm going to offer 702 into evidence, Your

1 Honor.

2 JUDGE SIPPEL: Is that now?

3 MR. COHEN: Yes, sir.

4 MR. PHILLIPS: No objection.

5 JUDGE SIPPEL: No objection. It's in. Seven-oh-two is
6 received.

7 (Whereupon, the above-referred to document was received
8 into evidence as Cablevision Exhibit No. 702.)

9 BY MR. COHEN:

10 Q Let me show you what we've marked as Cablevision Exhibit
11 701.

12 (Whereupon, the above-referred to document was marked as
13 Cablevision Exhibit No. 701 for identification.)

14 BY MR. COHEN:

15 Q Now, look at this document. What it appears to be to me,
16 sir; you can read it on your own, see if you agree with my
17 conclusion is an analysis of the duplication between GSN's Saturday
18 night audience and Hallmark's Saturday night audience, right?

19 A Okay.

20 Q Okay? And the column that's highlighted, the only column
21 that's highlighted is primary duplication, right?

22 A Yes.

23 Q Okay. Do you have any explanation as to why in comparing
24 an overlap in the ordinary course of business GSN doesn't seem to
25 recognize that primary duplication is too biased to make a

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1 difference to be reliable?

2 A If -- if she is -- or this is he -- is highlighting it,
3 they must be endorsing this one.

4 Q Right.

5 A So they either don't -- they either don't detect the bias
6 or they detect it and they don't think it's important --

7 Q Right.

8 A -- for this -- for this particular analysis.

9 Q Right. In any case, the purpose of the GSN duplication
10 analysis in the ordinary course is to figure out what the viewer
11 overlap is between themselves and competitive networks, correct?

12 A The purpose of -- of whose --

13 Q The reason that GSN runs --

14 A Oh.

15 Q -- duplication analysis.

16 A Sure.

17 Q They're running it for the same purpose you're running it
18 as, right?

19 A It's close, but not the same.

20 Q Right.

21 A I disagree with that.

22 Q Okay. But their purpose is to see what percentage of
23 their audience also watches a competitive network, or the other way
24 around, right?

25 A I think that's fair.

1 Q Okay. And you had contact -- interaction, was that your
2 word?

3 A Yes.

4 Q Interface. That was your word.

5 A Yes.

6 Q Interface. Interface with the head of Research, right?

7 A Correct.

8 Q And you never asked him a question about whether the way
9 you look at Nielsen duplication analysis is the way that the
10 network looks at it in the ordinary course, correct?

11 A Well, I said I can't recall. The last time I spoke with
12 him was probably 2011 or 2012, so I can't -- I -- just siting here
13 I can't tell you what --

14 Q Well --

15 A -- what the contents of our conversation was.

16 Q But this is not a deposition anymore, sir.

17 A Okay.

18 Q This is prime time.

19 A Yes.

20 Q This is our TV, right? I don't get a chance to ask you
21 again.

22 A Right.

23 Q It's not like when I ask you at a deposition --

24 A Right.

25 Q -- and you don't recall.

1 A Yes.

2 Q I'm not saying it wasn't in good faith, then you refresh
3 your recollection. All I can do in this courtroom --

4 A Yes.

5 Q -- is ask you your present recollection.

6 A Yes.

7 Q And you don't have any present recollection of discussing
8 this with anyone at GSN, correct?

9 A Sitting here I don't.

10 Q Right. And you didn't have any when I asked you at your
11 deposition, did you? Don't remember?

12 A Don't remember.

13 Q Okay. You can put that document aside.

14 MR. COHEN: We move it into evidence, Your Honor, 701.

15 MR. PHILLIPS: No objection, Your Honor.

16 JUDGE SIPPEL: Received.

17 (Whereupon, the above-referred to document was received
18 into evidence as Cablevision Exhibit No. 701.)

19 BY MR. COHEN:

20 Q Now, can you turn back to Mr. Orszag's report on page 77?
21 You may still be there.

22 A Yes.

23 Q All right. And I want to deal with these first three
24 bullets that you said were irrelevant. Irrelevant? Was that your
25 word?

1 A Yes.

2 Q Okay. So in these first three bullets on page 77 Mr.
3 Orszag is doing a duplication analysis from the perspective of WE,
4 right?

5 A Correct.

6 Q Now what you report in your both duplication and your
7 secondary duplication, and then he goes on to report, is the
8 duplication analysis from the perspective of GSN, right?

9 A Yes.

10 Q If you're sitting at GSN and you want to know what your
11 viewers are watching, right, you look at it from the perspective of
12 GSN, right?

13 A Perhaps. That's not -- that's not the context that
14 informed my framing, but -- but it's -- it's possible that that's
15 how they do it, yes.

16 Q Right. And if you're sitting at WE and you're saying,
17 gee, what do our viewers watch, who are our real competitors, you'd
18 look at it from the perspective of WE, wouldn't you?

19 A If you were -- if you were WE tv, you could be interested
20 in that vantage, yes. I'm interested in something different.

21 Q Right. So if I were at WE tv and I said, gee, I really
22 want to know who hypothetically my principal competitor is, because
23 maybe I'll ask my VICO to knock them off, I would be interested in
24 what my duplication analysis shows, right? Where are my viewers
25 going when they don't watch me? Isn't that true?

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1 A But -- no, because you're not taking away WE tv in this
2 experiment, right? We're taking away GSN. We want to know where
3 GSN viewers are going to go when it's taken away, right? So what
4 I want to do is, if I wanted to be really evil, is I'd line up all
5 of my potential rivals and I'd look at it from their perspective
6 and I'd want to figure out if I took away this guy, right, where
7 would his customers go? If I took away that guy, where would his
8 customers go? Right? So we take out GSN and by this both
9 duplication, right, their customers go. And we know that from the
10 lift analysis, too.

11 Q Right, we're going to come to the lift analysis. And if
12 we do the primary duplication analysis, even from the perspective
13 of GSN where the viewers of GSN are going is to 20 different
14 networks or more before they go to WE, correct, from on a primary
15 duplication analysis?

16 A When you do the primary -- when you do the primary with
17 all of its warts, yes --

18 Q Okay.

19 A -- you've got -- you get 20 before.

20 Q Now let's just talk about your lift analysis for a
21 minute, and we may come back to it a little bit later, but I just
22 want to talk about it for a moment. Your lift analysis, sort of
23 the question you're trying to answer in your study is if I take
24 away GSN from Cablevision subscribers, where will they go, right?

25 A Correct. I -- I -- if I could refine it, it says where

1 did they go?

2 Q Where did they go?

3 A For the very specialized subset of customers who lost it;
4 that is, those with a low -- low affinity for GSN, where did they
5 go? Yes.

6 Q And so you did that analysis using set top box data,
7 correct?

8 A Correct.

9 Q And what you found, you say, was that there was a
10 statistically significant migration of GSN viewers to WE, correct?

11 A Correct.

12 Q And look at footnote 231 of your report.

13 A Okay.

14 Q Okay? Ninety-nine.

15 MR. PHILLIPS: Is this the testimony or report?

16 MR. COHEN: I'm sorry. The testimony. In the appendix.

17 BY MR. COHEN:

18 Q Okay. And this is your lift analysis in this appendix.
19 And God knows, I'm not going to go through the formula. All right?
20 I'm going to save that for a special session on the weekend. Okay?
21 And in your lift analysis this is the backup for your conclusion
22 from the set top box data, right?

23 A Right.

24 Q That people who no longer, right -- let me just take a
25 step back. The set top box data was actual viewing data for

1 Cablevision customers, right?

2 A Correct.

3 Q Okay. And based on information they got from their cable
4 box that could be processed, and that data was turned over to you
5 and you were able to perform an analysis, right?

6 A And I want to -- you're giving me a little too much
7 credit. My -- my analysis is a refinement of an analysis that your
8 expert -- expert put forward, right?

9 Q Okay. Well, I could never you give too much credit.

10 A Okay.

11 Q Okay? And look at footnote 231.

12 A Yes.

13 Q What Mr. Orszag found, right, was that WE was [REDACTED] in the
14 networks that absorbed additional viewing minutes after GSN was
15 tiered. Do you see that in footnote 231? Right?

16 A I see it. I -- I don't know what the ranking would look
17 like after you correct Mr. Orszag's specifications, right? That --
18 he got that ranking in the context of his model, which is
19 contaminated for the reasons that I lay out.

20 Q Where is your ranking?

21 A I didn't do a ranking.

22 Q Okay. Well, wouldn't we want to know whether there were
23 other networks that were more likely going to get or did get more
24 viewership than WE did? Why wouldn't we want to know that?

25 A We might want to know it, but I -- I -- I have something

1 in common with Mr. Orszag in that his model, the main take-away was
2 that WE tv enjoyed a one percent lift. And this is among the --

3 Q Yes.

4 A -- again, it's a very selected group of individuals who
5 -- who did not get to keep access --

6 Q Yes.

7 A -- and thus have very low affinity for GSN to begin with.

8 Q Yes.

9 A When I do the corrections on his model, I get a two
10 percent left that's statistically significant.

11 Q Okay. So you got a two percent lift, right?

12 A Among the set -- this is very important. Very important.
13 Among the subset of customers who have demonstrated a low affinity
14 for watching GSN. These are the ones who did not complain loud
15 enough to get the subsidy, right? It was actually taken away from
16 them. If we observe the same substitution patterns among this
17 subset of low-affinity GSN viewers and we project it into the
18 control group --

19 Q Right.

20 A -- of the high-affinity GSN viewers, we would have
21 observed a nine percent lift --

22 Q Yes.

23 A -- in WE tv viewing.

24 Q How many minutes a month is that of TV viewing?

25 A Nine percent?

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1 Q Yes.

2 A I give the answer here, but --

3 Q Well, why don't you tell me where it is? I don't have it
4 anymore memorized sometimes than you do.

5 MR. PHILLIPS: I think your memory is better than mine,
6 actually.

7 THE WITNESS: We might have to go back into the main body
8 of the text, because this is the technical appendix, and I don't
9 know if I report the nine percent in the technical appendix.

10 BY MR. COHEN:

11 Q Let me try to help you out.

12 A Okay.

13 Q All right? It's a couple of minutes a day, right? Isn't
14 that what it is? You're talking about two or three minutes a day
15 of additional TV viewing on WE?

16 A It's a -- it would have been a nine percent lift. And
17 the question is, is that economically significant? When you put it
18 in minutes, it's hard for me to say because I don't know what the
19 base is.

20 Q Well --

21 A If you start with a minute -- well, hold on. But if you
22 start with a minute, I don't watch a lot of television anymore, but
23 if you start with a minutes-base that's small and you raise it by,
24 what did you say, a few minutes --

25 Q A few minutes.

1 A -- it could be -- that could be a big lift. So to me
2 just the raw minutes aren't as important as the -- as the
3 percentage --

4 Q Right.

5 A -- increase in minutes.

6 Q Well, let's try to stay on this point for a second.

7 A Okay.

8 Q First let's go back to footnote 231. Mr. Orszag has
9 testified that there are 15 networks that received a bigger lift
10 than did WE, correct?

11 A Using his specifications.

12 Q I understand.

13 A I reject his specifications.

14 Q Right.

15 A So I'm not ready to -- to embrace that ranking.

16 Q Okay. Well, you're not --

17 JUDGE SIPPEL: What is a specification as opposed to a
18 finding or a conclusion?

19 THE WITNESS: Right. So -- so what I've done -- Mr.
20 Orszag designed the test. He calls this his direct test. He was
21 trying to show that -- two things: One that the lift wasn't that
22 big. He got a one percent lift among this very selective,
23 self-selected group of non-GSN loyalists. But then he -- then he
24 also wanted to suggest that it was small in terms of minutes and
25 that there were other defections that were going on that were more

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1 important than we viewed them.

2 I've -- I've done some corrections to his model. His
3 model suffered some classic problems. It suffered from endogeneity
4 bias, among other things, right? And there are fixes for this in
5 the econometric literature. And when I do those fixes, this -- I'm
6 offering a new specification. Okay?

7 JUDGE SIPPEL: I see.

8 THE WITNESS: And when I do it, I don't get that big of
9 difference. You know, he's saying one percent lift among the
10 selected group of non-loyalists. I'm getting a two percent lift.
11 My is statistically significant.

12 When Mr. Cohen is asking me to -- what I think about the
13 ranking that comes out of Mr. Orszag's model and I don't -- I'm not
14 really prepared to endorse it because I reject his overall model
15 when it comes to the parameters that come out.

16 BY MR. COHEN:

17 Q Let me see if I --

18 A His parameters are biased.

19 Q First of all, if you were in he shoes of a VICO --

20 A Yes.

21 Q -- that had an incentive to discriminate, you'd want to
22 actually know not whether the lift was only statistically
23 significant, but what the lift actually would mean, right?

24 A Whether it would be economically significant.

25 Q Okay. Good. Turn to Mr. Orszag's report at Exhibit 334.

1 MR. COHEN: In the big book, Your Honor, CV 334, table --

2 JUDGE SIPPEL: CV 334.

3 MR. COHEN: Table 2.

4 JUDGE SIPPEL: Table 2.

5 MR. COHEN: CV 334, page 34, table 2.

6 JUDGE SIPPEL: Of 197? Is that right?

7 Three-thirty-four?

8 MR. COHEN: CV 334.

9 JUDGE SIPPEL: I've got that.

10 MR. COHEN: Page 34.

11 JUDGE SIPPEL: Page 34.

12 MR. COHEN: Table 2. We're all there. I feel like I'm
13 calling out numbers.

14 JUDGE SIPPEL: Well, you can retire. When you retire,
15 you can call out bingo numbers.

16 MR. COHEN: I know. Might be an improvement for me, Your
17 Honor.

18 (Laughter)

19 JUDGE SIPPEL: It won't pay as well, but I mean, you
20 never know.

21 (Laughter)

22 JUDGE SIPPEL: Okay.

23 MR. COHEN: Okay.

24 JUDGE SIPPEL: Table 2.

25 BY MR. COHEN:

1 Q Okay. Now, this is Mr. Orszag's model that you've
2 criticized; I don't want to go back through all the criticism,
3 right?

4 A Right.

5 Q And what Mr. Orszag shows is that the left, as you call
6 it, was 1.41 seconds a day, right?

7 A Right, and we know that his model is biased downward
8 and --

9 Q Okay.

10 A -- so when I do the correction, I get about double that
11 effect. But importantly this is over a very selected group of
12 customers. The relevant question is what would have happened among
13 the substitution patterns of those who are actually GSN loyalists?
14 We don't ever get to see that --

15 Q Okay.

16 A -- because the experiment was botched.

17 Q Okay. Let's stay with my questions.

18 A Okay.

19 Q Okay? I don't know what -- you may think the question is
20 different. I want to ask my questions. What you found is that,
21 oh, no, was the lift, as you call it, is three seconds a day in
22 viewership?

23 A I --

24 Q Yes or not?

25 A I don't know if it -- if we can perform that exact

1 transformation. I -- I -- what I know is that he found a one
2 percent lift and I found a two percent left. So --

3 Q Right. So just doing -- it's not going to be an hour a
4 day --

5 A No.

6 Q -- if it's 1.41, right? It's around three seconds a day.
7 That's what you found in this group, right?

8 A I -- I'm -- I'm reluctant to project it onto that, but
9 that's a -- that would probably be a pretty fair first
10 approximation.

11 Q And you think that from a lift of three seconds a day we
12 can draw an inference that Cablevision re-tiered GSN so that they
13 could find another three seconds a day that people would watch WE
14 tv? That's what your hypothesis leads to, right?

15 A No, you're -- you're failing to see that we're only
16 getting to observe the lift among a select group of customers that
17 had weak affinity for GSN. What we would like to do -- if -- if we
18 could have designed this experiment, right, we would have liked to
19 have randomly chosen homes to take away their GSN, right? But
20 that's not what happened.

21 The ones who got GSN taken away from them were the ones
22 that didn't call and complain loud enough. The ones who called and
23 complained loud enough, right, that are in Mr. Orszag's control
24 group is really the set of customers that we're interested in.
25 We'd like to know how they would have shifted their minutes. We

1 don't get to see that. We only get to see the shifting of this
2 selected group.

3 And I admit that within the selected group of the
4 low-affinity GSN customers you don't see a very big lift. It's on
5 the order of two percent. But if you observe the same substitution
6 patterns among that -- among the treatment group and you project
7 that into the control group who have demonstrated to us their
8 affinity to -- to GSN, you would get a nine percent lift. And the
9 question to me is would you be -- would you be willing to do this
10 for a nine percent lift among the GSN loyalists? That's a relevant
11 question. Maybe so.

12 Q Okay. Well, let's just stay with the math.

13 A Yes.

14 Q So that would be 17 or 18 seconds a day, right? That's
15 what it is.

16 A Yes.

17 Q Correct?

18 A To me --

19 Q Of viewership.

20 A Yes, I don't -- I don't know how to state it on -- in
21 terms of minutes or seconds today, but I can -- I can tell you as
22 an economist that a nine percent lift seems economically
23 significant.

24 Q Now, a nine percent lift might be a lift from \$1 to
25 \$1.09, or from a million dollars, right --

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1 A Correct.

2 Q -- to a million ninety thousand, right?

3 A Correct.

4 Q Okay. So the actual numbers matter, not just the
5 percentage. You know that as an economist, don't you?

6 A Sure, actual dollars matter.

7 Q Okay. And the lift that you get is in seconds per day
8 under any analysis that you've supplied, correct?

9 A I don't do it in terms of seconds per day, so I -- I
10 can't comment.

11 Q No, of course you don't do it, but if it's translated
12 into seconds per day, is there something wrong with my math --

13 A Well, I think that --

14 Q -- that -- let me finish the question --

15 A Oh, sorry.

16 Q -- and I'll take a deep breath and maybe you'll take a
17 deep breath and we'll get through this. Okay? If I've been
18 agitated, I apologize to you. So we'll try to do it slowly.

19 A nine percent lift is seconds per day, isn't that true?

20 A I actually state what the nine percent lift is if you'll
21 let me -- in my report I -- I convert the nine percent, right?

22 Q I'd be happy to.

23 A Yes.

24 Q You just tell me what page you're looking at.

25 A So, I'm looking at paragraph 41 right now.

1 JUDGE SIPPEL: In your testimony?

2 THE WITNESS: Yes, page 27. So now we can with a piece
3 of -- with a napkin and a -- and a pen we can take this higher base
4 of minutes within the control group and grow it by nine percent.
5 And I can tell you exactly what the lift would be on a per-month
6 basis.

7 BY MR. COHEN:

8 Q Only for a small group of the viewers, correct?

9 A For the GS --

10 Q Not per viewer?

11 A Right, for the GSN loyalists. Correct.

12 Q Right. Sir, I'm asking you overall, right, if WE tv was
13 trying to steal viewers from GSN, it's not limited to GSN
14 loyalists, is it?

15 A No, but those are the ones who would be most likely to
16 go. If you take away something from a loyalist, the question is,
17 you know, what are they going to -- what are they going to do? I
18 mean, I think that both sets are relevant, but the loyalists is
19 where the action is going to be.

20 Q Yes. In the overall group -- the overall treatment group
21 is that what we call it?

22 A So here the treatment group were those who had it taken
23 away. Those are the ones with a low affinity for GSN.

24 Q Yes.

25 A In -- in the treatment group I'm -- I'm estimating about

1 a two percent lift and I'm saying that if you took the findings in
2 the treatment group and projected it onto the control group, which
3 demonstrates a greater affinity for GSN, you would see something on
4 the order of a nine percent lift.

5 Q Okay. Sir, what happened in the real world is that
6 Cablevision didn't take away the service from the loyalists. It
7 just asked that they pay more money, right?

8 A [REDACTED]
[REDACTED]
[REDACTED].

11 Q Right.

12 A So it did get taken away.

13 Q If you really wanted to hurt the loyalists and you wanted
14 to get those, you would just kick the network off your cable
15 system, right?

16 A No, because that would generate too much churn.

17 Q That would generate too much churn?

18 A Correct. That's why they had to give them the -- so,
19 when you get [REDACTED] irate customers calling, you have to do
20 something. You have to mitigate.

21 Q Yes, but [REDACTED], as you've -- in fact, [REDACTED], as you've
22 already testified, [REDACTED] of those [REDACTED] irate customers got no
23 subsidy, right?

24 A Correct.

25 Q Okay. Let's leave the lift alone. But nine percent, if

1 -- well, let me just ask one last question.

2 A Sure.

3 Q If Mr. Orszag's number is 1.6 seconds per day of
4 additional viewing at 1 percent, even at nine percent we're talking
5 about 10 seconds a day, right?

6 A No, that's not true because you start from a bigger base,
7 right? What -- what Mr. Orszag is unfortunately limited to is this
8 group of folks who didn't watch much GSN to begin with, right? So
9 you're starting with a bigger base and you're going to get a bigger
10 effect.

11 MR. COHEN: Your Honor, I'm at a new line. I'm happy to
12 take a break now. I'm happy to press through to lunch. Whatever
13 suits anybody, especially Your Honor.

14 JUDGE SIPPEL: I think to me it makes sense to take a
15 break for lunch. What do you think, Mr. Phillips?

16 MR. PHILLIPS: I'm here at Your Honor's leisure.

17 MR. COHEN: Or we could take a 10-minute break and we can
18 work. Whatever folks what to do.

19 JUDGE SIPPEL: Let's do that. Let's take a 15-minute
20 break and come back. Let's try and figure some time between 1:15
21 and 1:30 to break for lunch. How's that?

22 MR. COHEN: Okay.

23 JUDGE SIPPEL: So be back at quarter after 12:00.

24 (Whereupon, the above-entitled matter went off the record
25 at 12:04 p.m. and resumed at 12:25 p.m.)

1 JUDGE SIPPEL: Let's go back on the record. I have a
2 question to ask you before Mr. Cohen starts again.

3 These lift numbers, these lift numbers, like a, you know,
4 a couple of seconds a day. So whether it be by your count or
5 whether by Mr. Orszag's count, how does that translate into
6 something really tangible? You see what I mean? I mean would you
7 extrapolate the seconds into the number of viewers that they apply
8 to or multiply, how many viewers are you going to -- well, let's
9 take Mr. Orszag. How many viewers or customers is he multiplying
10 by 1.6 seconds a day?

11 THE WITNESS: I can speak to what I do better.

12 JUDGE SIPPEL: All right.

13 THE WITNESS: But let me --

14 JUDGE SIPPEL: Give me your seconds then.

15 THE WITNESS: Yes. So mine, mine, if you look at my
16 direct test model, the dependent variable, the variable that I am
17 trying to predict, right, is WE TV's share, viewing share. Right?

18 JUDGE SIPPEL: All I want to know what is, just tell me
19 what is the time period? If he's got 1.6 seconds a day, how many
20 seconds a day do you have?

21 THE WITNESS: Mine is expressed in terms of budget shares
22 or viewing shares. So, so for example, if the average WE TV
23 household consumes about half a percent of their viewing on WE TV,
24 right, if the average Cablevision household -- let me take that
25 back -- consumes about a half a percent of their viewing for WE TV,

1 and what my model would do is a prediction of a lift of between 2
2 and 9 percent of that viewing share. You then would have the
3 translate that viewing share, which like begins at a half of a
4 percent or 0.6 -- I'm going by memory -- you'd have to then
5 translate that into minutes. And --

6 JUDGE SIPPEL: Well, your viewing share ---- what would be
7 your viewing share ---- I mean number of viewers?

8 THE WITNESS: No. Viewing share is literally is that for
9 the typical Cablevision household, the household that's in their
10 sample that they turned over to me, the set top box data, you start
11 with which share of their viewing minutes do they devote to WE TV?
12 Right? That's what my model and what Mr. Orszag's model was
13 designed to predict. We're trying to predict whether this tiering
14 episode caused that viewing share to go up, right, the average
15 share of a Cablevision's household time devoted to watching WE TV.
16 Right?

17 JUDGE SIPPEL: That's the lift?

18 THE WITNESS: That's the lift. He's getting 1 percent and
19 I'm getting 2 percent. And I'm noting, this is important, that
20 we're looking at a very select group of individuals with low
21 affinity. If you saw the same substitution patterns within the
22 control group you'd get a 9 percent lift.

23 So my best estimate would be somewhere between 2 and 9
24 percent of the lift in the viewing share. And the viewing share
25 starts off I believe at around 0.6 percent for WE TV. Now sitting

1 here I can't convert that into minutes. But at the end of the day
2 what these guys are in the business of doing are monetizing
3 eyeballs. And so the more eyeballs you can collect, the more
4 minutes you have watching TV, your TV network, the more valuable
5 that you are to advertisers. That's how they, that's how they
6 would monetize the data.

7 JUDGE SIPPEL: This was the advertising. Did I convince
8 an advertiser --

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: -- to take their products or their
11 programming because of these lift numbers?

12 THE WITNESS: Well, they're able to, they're able to do a
13 better job with their inventory, as I understand it, they're able
14 to sell their advertising at higher rates if they have more
15 eyeballs chasing, if they're offering up more eyeballs than they
16 otherwise would be. Ultimately, in the long run what you want to
17 do is if you own, if you're vertically integrated into a network,
18 if command higher license fees as well. And so to the extent that
19 you have greater viewership you could, you could in the next round
20 of negotiations seek the higher license fee. But in the short
21 term, the immediate impact is higher advertising revenues.

22 JUDGE SIPPEL: By virtue of the lift.

23 THE WITNESS: By virtue of having more eyeballs watching,
24 yes, WE TV.

25 JUDGE SIPPEL: But I'm asking what is the significance of

1 the number of viewers that is shifted by virtue of the lift? Can
2 you put some kind of a calculated hard number on that?

3 THE WITNESS: I, sitting here I don't think I can put a
4 calculated hard number. I've seen some numbers from GSN that I
5 cite that relate subscribers to additional advertising revenues but
6 I don't know how to map additional viewing minutes into higher
7 advertising revenues. But I imagine that that's the, that's the
8 calculus that you want to go through.

9 JUDGE SIPPEL: Well, I don't want to go through it.

10 (Laughter.)

11 JUDGE SIPPEL: I'm trying to think is that -- let's,
12 hypothetically let's write the hypothetical decision and order. I
13 agree with Dr. Singer's lift analysis. What am I going to do with
14 that? How do I apply it to a real life situation? I can say it's
15 going to convince potential advertisers of more eyeballs, but how
16 many? What hard numbers do I have to work with?

17 THE WITNESS: Right. What I would want to do to take that
18 extra step -- what I hear you saying is how do you monetize that?
19 How would Cablevision monetize the lift in viewing shares? So if
20 they went from a .6 average share to a -- I don't know if I can do
21 the math -- but to, you know, lift factor between 2 and 9 percent,
22 and then to a .7 or .8 shares. I'm trying to do this in my head.
23 Maybe it's .65 shares, you know, what would that be in -- yes, but
24 then, okay, suppose that the lift goes from .6 to .65, I'm just
25 saying this hypothetically, what we'd want to do then is to

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1 understand how that increase in viewing share, right, gets
2 converted into higher advertising revenues. That's what you'd like
3 to do but sitting here I can't tell you what that, what that
4 conversion is.

5 JUDGE SIPPEL: So what does a, what does a real world
6 chief executive do with this information?

7 THE WITNESS: Oh, I think a real world chief executive
8 would be able to do that mapping probably in his sleep. If you're
9 in the business of selling advertisement I hope you know what it
10 means to present advertisers with more eyeballs. Right?

11 JUDGE SIPPEL: Well, okay. Yes, I see that in the,
12 putting it in the abstract. But I'm trying to get it down to the
13 concrete. For instance, I'm not going to lose a minute of sleep if
14 that's the best this guy can give me because this doesn't really do
15 anything for me. It doesn't do anything more significant enough
16 that I'm going to wake up and make that calculation. I want to
17 know give me something hard, something I can grab on to.

18 THE WITNESS: Right.

19 JUDGE SIPPEL: You're about to say you'd like to see
20 somebody else do that, I can this as far as I can go with it?

21 THE WITNESS: I think that what my, where my analysis ends
22 is to attempt to estimate the lift in viewing shares that WE TV
23 enjoyed. What I think I would turn to, I mean I'm certainly
24 capable of doing it but I don't have the input that I need right
25 here, is how you convert the higher viewing shares into higher

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1 advertising dollars. Right. That's the missing ingredient if you
2 want to try to monetize the lift.

3 What I've testified to is whether the lift was
4 statistically significant, which it was, and whether it was
5 economically significant. And we can have a discussion, a friendly
6 one, as to whether a 2 to 9 percent lift in viewing shares is
7 economically significant. I believe it is.

8 MR. COHEN: Let me follow up if I may.

9 JUDGE SIPPEL: I just want to have one more question. In
10 the economic sense what does, what does statistically significant
11 mean? Again you can't monetize that either, or can you?

12 THE WITNESS: No, I do think you could monetize an
13 increase. Look, we're all competing. All these networks are
14 competing for viewership. Everyone would love to take their share
15 from a .6 percent average to a .7 or a .8. That would even be
16 better. Hell, 1 percent would be phenomenal; right? And so I am
17 very comfortable knowing that offering people, the higher viewing
18 share you can deliver to advertisers the higher revenue you can
19 command. They're in the business of selling eyeballs.

20 JUDGE SIPPEL: Well, I hear you.

21 THE WITNESS: Right.

22 JUDGE SIPPEL: What I'm saying when does a statistic
23 become substantially or economically significant?

24 THE WITNESS: Right, so what we are, what we are
25 discussing here, right, is given a lift between 2 and 9 percent

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1 does that constitute what we call economic significance? The
2 statistics in the back of my report show you that they're already
3 -- a lift is statistically significant. It's unlikely that it
4 happened by chance, okay. And now the question is, because you can
5 have things that are statistically significant and just don't
6 amount to a lot, they might not be economically significant.
7 Right?

8 And my opinion is that a lift between 2 and 9 percent, 2
9 being the lift that we observed in the treatment group that started
10 off with a low affinity for GSN to begin with, 9 in a control group
11 which is those that have a high affinity for GSN, right, I'm
12 comfortable saying that a 9 percent lift is in the direction of
13 being economically significant.

14 JUDGE SIPPEL: Is that 9 percent all the viewers, is
15 applied to all the viewers that GSN had on the time it was actually
16 put up to the higher tier, or do you wait until you take into
17 consideration those that complained, those that complained they
18 were going to leave or turn it off, I thought with the benefits
19 that were given to keep them in an all that?

20 THE WITNESS: Yes, so this analysis doesn't get to look
21 beyond the duration of the subsidy. This analysis that's in the
22 database that we're using, the subsidy is still in place. We're
23 looking at April 2010, April 2011 I believe. So we, unfortunately,
24 and this is something that you know it afflicts both me and Mr.
25 Orszag, we can't, we can't fix the experiments in a sense. The

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1 experiment is what it was, which is they took it away and a bunch
2 of people complained. The ones who complained successfully got to
3 keep it; right? And so there's no minutes to substitute for them,
4 they're in a control group. Right? The ones who either didn't
5 complain or didn't complain successfully got it taken away. Right?
6 We see that these guys were given already a very small base of
7 minutes to trade up. Right?

8 And so what we're looking at is where did this select
9 group trade their minutes? Mr. Orszag finds 1 percent lift in WE
10 TV share. I find a 2 percent lift in WE TV share. But the
11 important thing, and I'm going to say it until I'm blue in the
12 face, is that we didn't get the experiment, we're not getting to
13 observe the experiment that an economist would design, the ideal
14 experiment. The idea experiment would be to see what would happen
15 among a group of homes that included the GSN loyalists.

16 And what I've done is I take the 2 percent lift in the
17 treatment group and I say if the same substitution patterns would
18 have manifested in the control group what would the lift have been?
19 And it's 9 percent. And then the fight that comes ---- is 9
20 percent significant? Is 9 percent economically significant? I
21 think it is.

22 JUDGE SIPPEL: Well, the way you've explained it, this is
23 really not, this is not the methodology you, that you have applied
24 as part of the ground rules. You're not happy with it. This is
25 not the way that you would want to design something like this?

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1 THE WITNESS: Right. I mean economists would love, and
2 economists are increasingly doing these natural experiments.
3 Right? You'd like that for Cablevision customers to be randomly
4 selected for this experiment. It's not going to be a fun
5 experiment: we're going to take away GSN from you. That's what
6 we'd like; right? We didn't get that.

7 What we got was GSN was taken away from everyone. And
8 the ones who called to complain successfully got to keep it.
9 Right? And so the best that Mr. Orszag can do -- he's the one who
10 offered this test in the first instance -- the best that he can do
11 is to look at the substitution patterns among those people who had
12 it taken away, that is those people who had low affinity for GSN in
13 the first place. He finds that there's not a lot of substitution
14 to WE TV among that -- among that treatment group. He's getting 1
15 percent.

16 I do some refinements to his analysis, I get 2 percent.
17 But again, the important take-away is that we're looking at a
18 highly selected, sub-selected sample. Right? We don't like this
19 as economists, we'd prefer that there be a natural experiment in
20 which literally Cablevision households would be randomly selected
21 for this experiment. That didn't happen here; right?

22 And so but we're doing the best that we can. And, you
23 know -- well now I'm just repeating myself.

24 MR. COHEN: One or two follow-ups just to pick up on the
25 Judge's questions. And then we really leave lift.

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1 THE WITNESS: Yes, okay.

2 MR. COHEN: Because we have to move on.

3 BY MR. COHEN:

4 Q But just putting it, just to be clear, you have not
5 calculated in terms of economic benefit, other than transferring
6 minutes, economic benefit as a result of the lift that might be
7 felt by WE or Cablevision; correct?

8 A Correct. I have not, just to be clear, I have not
9 monetized what that lift means --

10 Q That's what I meant.

11 A -- in terms of advertising dollars. I have calculated
12 the loss to the downstream division. And as any rational firm I
13 hope would not just tolerate a loss, I would hope that they would
14 insist that there be a gain that would offset --

15 Q Right.

16 A -- the loss.

17 Q Let's just stick with the narrow question though if we
18 can.

19 A Okay.

20 Q All right. The other thing I was going to say is you
21 were talking about loss of Advertising. You know, don't you,
22 there's been testimony in this trial, that networks like WE and
23 GSN, they sell Advertising on a national basis; right?

24 A National and local. They do both.

25 Q Now Mr. Zaccario testified yesterday, I'll represent to

1 you, that GSN only sells national Advertising.

2 A There are local sales in the database. And I had to, I
3 had to strip out the local sales to perform my, my regression
4 analysis of the national sales. So who's doing the selling? It
5 could be local avails by the cable operators --

6 Q Right.

7 A -- that won't show up in the GSN Advertising sales
8 database.

9 Q Right. But GSN only sells national Advertising; right?

10 A If Mr. Zaccario says it, it must be true.

11 Q So they have no sales.

12 A Well, if you want to suggest that they have no influence
13 on the sale of a local add, that's fine. I don't get to see that,
14 I just get to see the database.

15 Q Okay.

16 A And my database contains local sales and national sales.

17 Q Mr. Singer, here's my point I'm trying to make.

18 A Okay.

19 Q If we're thinking about the impact of this lift, when
20 Cablevision retiered WE, it affected only subscribers in
21 Cablevision systems; correct?

22 A No. It appears that the effect goes beyond -- okay, in
23 the short --

24 Q In terms of switch of minutes, sir, when you're talking
25 about a lift of minutes you're talking about those people who watch

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1 GSN and WE on Cablevision, not on Time Warner, not on Verizon, not
2 on the DISH, not on Direct TV; right?

3 A I think the immediate effect, yes, is contained to the,
4 you know, to the Cablevision corridor. But I'm finding on facts in
5 terms of Advertising sales outside of the corridor.

6 Q We're going to come to that.

7 A Okay.

8 Q Right now I'm only talking about your lift analysis.
9 When we're talking about transfer of viewership and whatever the
10 economic impact might be, we're only talking about the transfer of
11 viewership within Cablevision; right?

12 A Correct.

13 Q And you said you thought that GSN had a share of about .5
14 on Cablevision?

15 A I looked at something during the break. I think it was
16 0.6 percent.

17 Q Okay. Let me use .5, not to minimize it, --

18 A It's easier. No, it's easier.

19 Q -- it's easier; right? So Cablevision has, and let's
20 make it again round numbers, 3 million subscribers; right?

21 A Yes.

22 Q And .5 percent of those 3 million subscribers are GSN
23 watchers; right?

24 A No, WE TV watchers. That was my, I was trying to figure
25 out the base from which we were going to add a 2 or 9 percent lift.

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1 So I went and looked up during the break WE TV's viewer share.
2 That's our left-hand, that's our dependent variable in the model.

3 Q Okay, .5.

4 A It was .61, I think.

5 Q Okay. How many people are we talking about?

6 A Oh, I got to see a sample. I got to see a sample, I
7 think, of 9 percent of Cablevision's households for this database.

8 Q Right. Okay.

9 A Right.

10 Q I don't think that this is going to be so complicated, so
11 let's just try to do it simply.

12 A Okay.

13 Q If WE or GSN had viewing shares of roughly .5, out of 3
14 million subscribers we're talking about 15,000 subscribers;
15 correct? 15,000 viewers?

16 A That's assuming that each viewer watched the same amount.
17 I just want to be careful that we're -- viewing shares is
18 denominated literally in terms of a household share of minutes.
19 Right?

20 Q Uh-huh.

21 A Household shares of minutes. So you're then applying my
22 .61 to the households instead of the minutes. But that's fine.

23 Q The only point I'm trying to make is we're not applying
24 the .6 to the 75 million other subscribers in other systems where
25 GSN is carried; correct?

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1 A I think it's fair that the lift is within, the viewing
2 lift that I'm estimating and Mr. Orszag is estimating is contained
3 inside of Cablevision's footprint.

4 Q Right.

5 A I grant you that.

6 Q And to the extent that advertising is sold on a national
7 basis, the impact of the lift in Cablevision households is diluted
8 by the millions and millions and millions of other households where
9 GSN is still on; right?

10 A I, I grant you that before we go to the data our working
11 hypothesis is that any harm to national sales to GSN should have
12 been contained to the cable footprint, Cablevision footprint in New
13 York which is only about 6 percent of your subs. It should have
14 been but it turned out that the impact was a lot bigger.

15 Q Well, we're going to come to your model.

16 A Okay.

17 Q Let's move to a different topic.

18 A Okay.

19 Q I think we've probably beaten this one to death, okay.
20 So let's move to another topic.

21 Let's talk about your conclusion that there is similarity
22 in programming.

23 JUDGE SIPPEL: You know, I'm still not satisfied why
24 somebody can't give me a number. We're doing all these
25 calculations and you get right to the punch point and then, boom,

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1 everybody falls back.

2 MR. COHEN: Well, I don't want to have --

3 JUDGE SIPPEL: How many viewers -- if you can't give me a
4 .6 percent number to calculate, how many viewers are we calculating
5 against? The viewers that --

6 MR. COHEN: Well, let me continue on with Mr. --

7 JUDGE SIPPEL: I'm sorry to take up your time but it's
8 frustrating.

9 MR. COHEN: No, no, no, no, Your Honor. We need to get
10 the things that you want to hear so please don't get frustrated.

11 BY MR. COHEN:

12 Q First of all, let's just assume there are how many, there
13 are 3 million households in Cablevision; correct?

14 A Correct.

15 Q So point -- can we stay with .5 to make it easy, my math
16 -- I'll do .6. .6 is 18,000 households; correct?

17 A That's one way to cut it, yes.

18 Q Okay.

19 A We're going to assume that every household watches.

20 Q We're just trying to give it a directional --

21 A Okay. Right.

22 Q -- number: 18,000. And if there is a 1 percent lift in
23 the 18,000 households, right, you'd get how many additional
24 viewers; 180?

25 A Well, but again I'm -- you're changing the base on which

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1 I'm applying the 1 percent lift. My dependent variable in the
2 model is the .6 percent viewing share. What I feel more
3 comfortable doing is lifting that by between 2 and 9 percent.

4 Q And that would get you to the viewing -- okay, that would
5 get you to the viewing share of on the lift, .6 would go to .62?

6 A Something like that, yes.

7 Q Okay. And 9 percent would be, say, .65?

8 A Yes, that's what I'd -- yes.

9 Q Okay. So the 18,000 would go from 18,000 to 18,200,
10 18,500 roughly?

11 A It's possible. But I'm not so excited about doing this
12 on a household basis. What I'd want to know is what does this mean
13 in terms of average minutes per household? What I want to do is
14 put it in a currency that can be translated for an advertiser. I
15 want to go to the advertiser and say that I used to be doing .6
16 percent viewing share and now I'm doing .65 percent viewing share
17 and I want to know how much more you'll pay me for that.

18 Q Only in Cablevision's New York market; correct?

19 A This is WE TV doing it. Yes, WE TV doing it.

20 Q It's still facing the competition from GSN across the
21 whole country; --

22 A Sure.

23 Q -- right?

24 A Sure. The only caveat that I'd put there is whether,
25 whether the viewing, a viewing share -- and I will grant you that

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1 the biggest is going to be, from WE TV's perspective is going to be
2 in the New York market.

3 Q So gaining a couple hundred viewers in New York?

4 A No, it's not gaining a couple hundred viewers. It's the
5 increase of .6 percent viewing share is somewhere between --

6 Q .62 and .65.

7 A Viewing shares. But those changes, when you start with
8 the base of .6 you're, you're almost denigrating, you know, the
9 performance of your client. .6 is something. I' like to have a
10 network that's earning .6. And if you get a 2 to 9 percent lift
11 that's something, that's important.

12 Q But you can't monetize it?

13 A To monetize it I would need someone, a sales, someone in
14 advertising to tell me the conversion of that it takes from that
15 share, that metric that we've been discussing into, into ad sales.

16 Q All right.

17 JUDGE SIPPEL: Okay.

18 MR. COHEN: Okay

19 JUDGE SIPPEL: Good enough.

20 MR. COHEN: I'm going to move on, Your Honor, unless you
21 have anything else?

22 JUDGE SIPPEL: No, go ahead. No, please.

23 MR. COHEN: Okay.

24 BY MR. COHEN:

25 Q Now, sir, you testified that another thing you looked at

1 in terms of the similarly situated position of the two networks was
2 you saw some overlap of the actual programming; right? The
3 relationship programming, is that what you called it? Paragraph
4 4.A. Let's get out paragraph 4.A of your report as we introduced
5 it.

6 You say, it's on page 3, you say, "Moreover, reality and
7 game shows, and particularly dating or wedding-based programming,
8 is focused on relationship..." you put in quotes,
9 "relationship-based programming."

10 4.A, Your Honor, on page 3.

11 JUDGE SIPPEL: I'm getting it.

12 MR. COHEN: Yes, I know.

13 BY MR. COHEN:

14 Q Are key, key components of GSN and WE TV's schedules.
15 Correct?

16 A I believe so, yes.

17 Q And you present a table where you lay out some of this
18 analysis; correct?

19 A Correct.

20 Q Okay, so let's look at page 18, Table 2. Love Block
21 programming, October 2010 to September 2011. Right?

22 A Yes.

23 Q And this is some of the information that you looked at to
24 draw the conclusion that there's similarity in programming between
25 the networks; correct?

1 A It's a piece of information, yes.

2 Q Okay. Well, they're all just pieces of information;
3 right? It was worthy of inclusion in your report?

4 A I'm looking for the existence or lack thereof of
5 similarity. And I thought that it was important to actually look
6 at programming that the two networks offered.

7 Q Now, what you do is you look at it in two time periods,
8 6:00 to 10:00 and 8:00 to 11:00, which you say is prime time;
9 right? The prime time window, you see that in paragraph 31?

10 A Yes.

11 Q Don't you know that the prime time window on GSN is 7:00
12 to midnight?

13 A No, I, I don't know that.

14 Q Didn't you testify in the NFL case that prime time on
15 cable is 7:00 to midnight?

16 A I may have but I, I don't -- when I came up with this cut
17 it was what I understand to be prime time on the East Coast between
18 8:00 and 11:00 p.m.

19 Q 8:00 and 11:00. Okay. And would you look at, look at
20 GSN 263 in your book. That's a document that we looked at
21 yesterday with Mr. Zaccario. There's the GSN chickens on the front
22 page. That's when you're know you're there.

23 A Sorry, I lost you. GSN?

24 Q GSN, which come after the C.V.'s in your book.

25 A Right. And the number?

1 Q Two six three.

2 A Okay.

3 Q All right. And turn if you would to the third page.
4 It's says "day part viewing."

5 JUDGE SIPPEL: Third page?

6 MR. COHEN: Third page. "Day part viewing." And this is
7 a GSN-prepared document per his testimony yesterday. It's actually
8 a GSN exhibit.

9 BY MR. COHEN:

10 Q And you see it says "day part viewing, prime, Monday to
11 Sunday 7:00 p.m. to midnight"?

12 JUDGE SIPPEL: I'm -- oh, I guess I'm on Exhibit 231.
13 It's 232?

14 MR. COHEN: Two sixty-three, Your Honor.

15 JUDGE SIPPEL: I've got it, 263.

16 MR. COHEN: Too many numbers.

17 JUDGE SIPPEL: I'm sorry. What page is it?

18 MR. COHEN: Page 3.

19 JUDGE SIPPEL: I got it.

20 MR. COHEN: The "day part viewing" is 7:00 p.m. to
21 midnight.

22 JUDGE SIPPEL: I see.

23 BY MR. COHEN:

24 Q You see that, sir?

25 A Yes.

1 Q Did anybody at GSN tell you that the prime time was 8:00
2 to 11:00?

3 A No.

4 Q Okay. So the numbers that you present back on Table 2
5 depend on the time period you use; right? Because you've got to
6 look at the programming in a time period, don't you?

7 A They will depend. The question is how much do they
8 change if you, if you expand it by one hour in either direction.

9 Q Okay. Well, we're going to do that.

10 A Okay, good.

11 Q All right. So why don't you look, please, at let's take
12 Cablevision Exhibit 137. It's in your book. And that's a
13 programming schedule from November of 2010. It's in the period, in
14 the period that you discuss in Table 2.

15 MR. PHILLIPS: I'm sorry, Jay. What number?

16 MR. COHEN: 137 Cablevision. I may have to go with the
17 Bingo after this. So, yes, the Court, the Judge is right.

18 JUDGE SIPPEL: It's a choice.

19 BY MR. COHEN:

20 Q All right? So let's just -- let's focus on the 7:00 to
21 midnight block, Monday to Friday. Do you have it in front of you?

22 A Yes.

23 Q Okay. And that's prime time as GSN defines it?

24 A As they define it in that document, yes, I'll grant you.

25 Q Do you want -- how many more documents would you like me

1 to show you?

2 A Well, I'm going to just, I'll just assume that that's how
3 they define it for the purposes of this question.

4 Q Okay. 7:00 o'clock to 8:00 o'clock is Deal or No Deal,
5 Monday to Friday; right?

6 A Yes.

7 Q Okay. Not relationship programming; correct?

8 A Right. But you've picked one month in my, in my survey.

9 Q I'll do as many months as you want to do, sir.

10 MR. PHILLIPS: Objections.

11 JUDGE SIPPEL: What are you objecting to?

12 MR. PHILLIPS: Well, the implication of his question is
13 that he says that there are a lot of things he's not showing the
14 witness that are going to say exactly the same thing. I, you know,
15 --

16 JUDGE SIPPEL: Well I didn't get that implication. I mean
17 he said what he said, and the witness reacted as he reacted. I'm
18 going to overrule the objection.

19 Let's just keep moving.

20 BY MR. COHEN:

21 Q Let's just stay with me here. If you think you find
22 other months I'm sure Mr. Phillips will show it to you.

23 Go 8:00 to 9:00 o'clock, Family Feud, that's not the
24 relationship programming; right? Not part of the Love Block that's
25 in your Table 2?

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1 A Not for this monthly, not for this monthly data you
2 picked, no.

3 Q All right. And 9:00 to -- 9:00 to 10:00 are the two
4 shows, right, that are in the Love Block?

5 A Correct.

6 Q 10:00 to 11:00 not in the Love Block, 11:00 to 12:00 not
7 in the love block; right? So one hour out of five hours Monday to
8 Friday in November of 2010 is Love Block programming; correct?

9 A Correct.

10 Q And on Saturday and Sunday -- That's 20 percent of
11 weekdays?

12 A For one week of the sample, the window that I did from
13 October 2010 through September 2011.

14 Q I'm just asking you to answer my question. I understand
15 that.

16 A It's not even, it's not comparable.

17 Q How about Saturday and Sunday, is there any Love Block
18 programming?

19 A Within which window would you like me to look?

20 Q 7:00 to midnight, prime time.

21 A No.

22 Q Okay. Turn to CV 169 in your book. You think it's only
23 one week perhaps, so let's, let's try another week. March 28,
24 2011, is that in your time period?

25 JUDGE SIPPEL: CV 169?

1 MR. COHEN: Yes.

2 JUDGE SIPPEL: I'm with you.

3 BY MR. COHEN:

4 Q Is that in your time period?

5 A It is another week in what is about a one year window of
6 time period, yes.

7 Q Okay. Is there more than one hour of Love Block
8 programming per week, per day in prime time?

9 A As you define it 7:00 to midnight again?

10 Q As GSN has defined it, sir, 7:00 to midnight.

11 A I see an hour again from 9:00 to 10:00.

12 Q Uh-huh. Each day; correct? Except for Saturday.

13 A Except for Saturday, right.

14 Q Okay. Now let's go back to your table which you said is
15 a broader period. I'm not going to show you every single week but
16 I do have a question for you.

17 A All right.

18 Q The period you picked is October 10 to September 2011;
19 correct?

20 A Correct.

21 Q When was the retiering decision made by Cablevision?

22 A There are two dates, and I don't know if I can call them
23 up. When it was, when they actually decided and when they
24 implemented. But I have a hard time calling up the exact dates.

25 Q Okay. Well, if I represent to you that it was decided or

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1 communicated to GSN in December, does that sound right to you?
2 Will you take my representation?

3 A Of 2010?

4 Q 2010.

5 A Yes.

6 Q And that the tiering took effect on February 1, 2011; is
7 that the date you were looking for?

8 A Yes.

9 Q So most of the period you look at in your Love Block
10 analysis that you say is this broader period is a period after the
11 decision was not only made but the retiering had taken effect;
12 correct?

13 A Well, it's, it's during the period of discrimination.
14 It's during the window. It's an ongoing violation according to the
15 Plaintiffs here.

16 Q So it's an ongoing violation according to -- Is that an
17 economic --

18 A That's my understanding.

19 Q Is that an economic opinion?

20 A It's my understanding that they think they're being
21 discriminated against to this day.

22 Q I'm asking you a different question, sir.

23 A Okay.

24 Q Try to stay with my questions or else we'll be much
25 longer. All right?

1 Do you -- does your analysis in Table 2 cover a period
2 after the decision was made to retier GSN?

3 A It covers a period before and after, yes.

4 Q Okay. You can put that away.

5 Now, I think you've also -- I'm going to take you to
6 another table in your report, Table 6 on page 34. And this is the
7 overlap in advertiser analysis that you did between GSN and WE?

8 A Yes.

9 Q Right? We'll wait for the Judge to get there.

10 JUDGE SIPPEL: I got it.

11 BY MR. COHEN:

12 Q Now, what you present in Table 6 is you look at the top
13 40 advertisers on WE and you, the first question you ask is whether
14 or not they also advertise on GSN; right?

15 A Correct.

16 Q Okay. And you find that ■ percent of the advertisers
17 overlap; correct?

18 A Correct.

19 Q Now, to qualify for an X in this right column, the far
20 right column, the GSN accounts, if they place -- if an advertiser
21 places \$1,000 of Advertising on GSN and \$10 million of Advertising
22 on WE you get an X; right?

23 A I believe so, yes.

24 Q Okay. And you know, do you know, both from Mr. Orszag's
25 work and from your work, that the vast majority of these

1 advertisers advertise on dozens and dozens of cable networks;
2 correct?

3 A Correct. Which is why I have to do further simulations
4 to see if the [REDACTED] percent is, is big or not in relative terms.

5 Q And if they advertise -- what you get is you found that
6 WE was [REDACTED], [REDACTED]? What did your simulation result in?

7 A All right, so if you repeat this analysis because what I
8 think the concern is that if you just stop the analysis there and
9 you say, Oh, [REDACTED] percent is big, you don't have anything to compare
10 it to. So what I wanted to do is replicate this analysis for other
11 pairings.

12 And I think I report that the overlap, this is at the
13 bottom of paragraph 53 --

14 Q That's where I was going, exactly.

15 A Yes. The overlap of 91 percent ranks [REDACTED] among 88
16 possible overlaps.

17 Q So there are [REDACTED] cable networks that have greater overlap
18 on Advertising with WE than GSN. Is that another way of saying it?

19 A By this metric.

20 Q Right. But this is the metric you employed?

21 A I offer many metrics. I offer a brand level analysis
22 too. But by this metric, yes.

23 Q We're only talking about paragraph 53; right? We're
24 talking one at a time; right?

25 A Okay.

1 Q And you know, do you not, that a significant number of
2 those ■ networks that rank higher than WE -- than GSN on the WE
3 overlap of advertisers are not women samplers, right, don't skew
4 women?

5 A It's possible. I haven't -- it's possible.

6 Q Now let's go to the next paragraph. Here you do a brand
7 level analysis, paragraph 54?

8 A Correct.

9 Q And what you find this time is that the, in the last
10 sentence of paragraph 54, is that the WE/GSN brand overlap, that
11 GSN ranks ■ among 88 possible overlaps with WE TV's top 40 brand
12 advertisers; correct?

13 A Correct. And I should note that in a footnote I show
14 what it would look like if you did it from the other perspective.
15 And we skipped over footnote 90 which was just the other foot
16 perspective for the firm level as well. Yes, I do it four
17 different ways.

18 Q Okay. This time you look at it from both perspectives;
19 right?

20 A Correct.

21 Q In the duplication analysis you didn't look at it from
22 both perspectives; correct?

23 A Correct. Correct.

24 Q Okay. But from the perspective that you present in the
25 text of your report there are ■ networks that rank above GSN;

1 correct?

2 A Correct.

3 Q Okay. Now, is advertising -- if this is outside of your
4 expertise just please tell me -- is Advertising priced in something
5 called CPMs?

6 A Yes.

7 Q And that's cost per thousands per measure?

8 A Impressions, yes.

9 Q Per thousand impressions?

10 A Correct.

11 Q So and that could be TV or print, that's why it's called
12 impressions?

13 A Right.

14 Q So a CPM in TV is the cost to reach 1,000 sets of
15 eyeballs in a given demographic; correct?

16 A Okay, yes.

17 Q And there's a variation in price among from network to
18 network about what the cost per CPM is; right?

19 A Correct.

20 Q And those variations in price reflect a difference in
21 value from the perspective of advertisers; correct?

22 A Sure.

23 Q And by the way, one of the things that you looked at in
24 2013 was you looked at kind of a metric of value for the network
25 ratings, right? Ratings per license fee; right?

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1 A Price per rating point?

2 Q Price per rating point.

3 A Well, it's in here.

4 Q Yes, we're going to come to it. Price per rating point,
5 right? And that was a measure of value from the advertising
6 perspective where you actually have a market; right?

7 A We have a market for license fees too, but yes, we have
8 a market for ads.

9 Q We have a market for ads. And but the ads correct for
10 ratings -- I mean the CPMs correct for ratings since you're
11 reaching a thousand pairs of eyeballs; right?

12 A Correct.

13 Q We don't have to worry about differences in ratings
14 because the metric is built into the CPM; right?

15 A Yes. With the caveat that some networks would claim that
16 their thousand eyeballs are more valuable than your thousand
17 eyeballs.

18 Q Have you looked at -- and you'd mentioned earlier Kagan
19 data; right, sir?

20 A Yes.

21 Q And Kagan is a standard industry source for public
22 information about the cable networks; correct?

23 A Correct.

24 Q And you know that Kagan reports CPMs for advertisers for
25 different networks; correct?

1 A Correct.

2 Q And you know, do you know from your work that the CPM
3 that was being achieved by WE according to Kagan was a multiple of
4 the CPM that was being achieved by GSN?

5 A I know that because your expert I think has ---- has
6 raised it, yes.

7 Q Okay. And have you found any information that suggests
8 that he misrepresented that in any way?

9 A No.

10 Q Okay. So let me show you what's been marked as Exhibit
11 715 which is a couple of pages from the Kagan book. We'll try to
12 keep information to the two networks.

13 (Whereupon, the above-referred to document was
14 marked as CV Exhibit No. 715 for identification.)

15 Now, this book, the book itself is a big fat book; right?
16 That has lots of data presented different ways?

17 A Right.

18 Q And in fact you sourced it in your report; did you not?

19 A Correct.

20 Q Okay. Now, this is the calculated 24-hour average CPMs
21 by network for many, many years. And if you look at 714, page 2 of
22 4, and I think you'll see WE TV. And let's just focus on 2010 and
23 2011, all right, because those are the years that we've been
24 talking about to some degree.

25 A All right. I think I know which page. It's stapled over

1 the page. But I think it's the one with WE TV on it.

2 Q Yes.

3 A Okay.

4 Q I want you to find the WE TV column.

5 A I got it. I got it.

6 MR. COHEN: Let's wait for the Court to get there. It's
7 the, it's just behind the red page. Thank you. The other page,
8 Your Honor, if you flip it.

9 Thank you, Dr. Singer, for showing him.

10 JUDGE SIPPEL: I got it. Where are we at? Oh, I see.
11 Very good, thank you.

12 BY MR. COHEN:

13 Q And the CPM, which is the cost per thousand impressions
14 for WE is 8.63. It's \$8.63 per thousand impressions, right, in
15 2010, and \$8.88 per thousand impressions in 2011?

16 A Yes.

17 Q And go to the next page, GSN. And for GSN -- you've got
18 to go to the last page. I'm sorry. GSN is on the last page of
19 this exhibit about a third of a way from the bottom. And you see
20 for 2010 and 2011 the number is 2.62 or 2010 for GSN and 2.89 in
21 2011. Do you see that?

22 A Yes.

23 Q Okay. And now you have testified, have you not, that
24 advertisers view these networks as similarly situated; correct?

25 A Yes.

1 Q All right. Even though advertisers are willing to pay
2 almost four times as much for 1,000 impressions on WE as they are
3 on GSN; correct?

4 A Sure.

5 MR. COHEN: I offer 715, Your Honor.

6 MR. PHILLIPS: No objections.

7 JUDGE SIPPEL: It's received in evidence.

8 (Whereupon, the above-referred to document was
9 received into evidence as CV Exhibit No. 715.)

10 MR. COHEN: Your Honor, I am going to move to the net
11 profit analysis -- the net benefit, net benefit analysis. And
12 that's going to take me awhile. So if this were a logical time --
13 and I'm not going to finish in 15 minutes -- so if this were a
14 logical time for lunch we wouldn't have to interrupt that line and
15 then I can expeditiously move through this and one other thing.

16 MR. SCHMIDT: Just in terms of our other witness, do you
17 have a sense of how much time that was?

18 MR. COHEN: This is not the easiest stuff in the world.
19 I think we're still on the direct. So I would hope an hour to an
20 hour-and-a-half, closer to an hour. That would be my -- I'll try
21 to work towards that.

22 JUDGE SIPPEL: For the net benefit analysis?

23 MR. COHEN: Right.

24 JUDGE SIPPEL: And how about the total time for this
25 witness?

1 MR. COHEN: I have just a few minutes after that, Your
2 Honor.

3 MR. SCHMIDT: The reason I'm asking, Your Honor, is our
4 witness is from out of town. We're holding him over. He's from
5 the New York area. I think we're holding him over to come back
6 Monday. If he weren't going to testify today I would like to let
7 him know so he can catch a flight instead of waiting for something
8 that's not going to happen.

9 JUDGE SIPPEL: I don't want to stay as late as we did last
10 night.

11 MR. SCHMIDT: Okay. Then I wonder if we need to just roll
12 him over.

13 MR. COHEN: Listen, I mean I want to be fair to the
14 witness and maybe fair to everybody here. It's been a long week.
15 Maybe start -- we know we can't finish him.

16 MR. SCHMIDT: Yes.

17 JUDGE SIPPEL: No, not even close. I'd say let him go.

18 MR. SCHMIDT: Okay, thank you. That's what I wanted to
19 ask, Your Honor. I appreciate that courtesy today.

20 MR. GORDON: The only thing is, Paul, you've got to tell
21 him yourself since he spent all last night putting it together.

22 (Laughter.)

23 JUDGE SIPPEL: Didn't they bring the cots in?

24 MR. COHEN: No cots, Your Honor. Cots went out with the
25 kayaks.

1 JUDGE SIPPEL: Okay. Well, let's then, it's 10 after, 10
2 after 1:00. Is that correct?

3 MR. COHEN: Yes. May I ask for 2:30, Your Honor?

4 JUDGE SIPPEL: Yes, I want to just say that.

5 MR. COHEN: If we're not doing another witness.

6 JUDGE SIPPEL: Boy, you're anticipating me. Yes, we'll
7 come back at 2:30 since we're making good time. Okay, we're in
8 recess.

9 (Whereupon, the hearing was in lunch recess from 1:09
10 p.m. until 2:35 p.m.)

11 MR. COHEN: May I proceed, your honor?

12 JUDGE SIPPEL: You certainly may.

13 CROSS EXAMINATION (CONT.)

14 BY MR. COHEN:

15 Q Dr. Singer, you recall at the beginning of the cross
16 examination, you told me that you went back and found on the
17 internet your testimony in the MASN case where you talked about
18 good will?

19 A Correct.

20 Q Okay. Let me show you what's been -- I'm marking for
21 identification as Cablevision 721.

22 (Whereupon, the above-referred to document was marked as
23 Cablevision Exhibit No. 721 for identification.)

24 Q And it's a declaration that you submitted in the MASN
25 case that's dated July 2, 2014. And my first question for you is,

1 is this what you were referring to?

2 A I believe so. I filed a few reports, but this contains
3 the paragraph that I found ---

4 Q And the ---

5 A -- on the internet.

6 Q And the paragraph that you found is Paragraph 27, right?

7 A No, 23 is the one that I came to first when I was doing
8 ---

9 Q Okay.

10 A -- my search.

11 Q Twenty-three. Okay. So let's just talk about that. So
12 in response to Mr. Phillips's question, you said that you found --
13 you realized you had addressed goodwill before in prior expert
14 reports, correct?

15 A Correct.

16 Q And in -- just to set the stage very briefly, this is a
17 fight between -- because the judge is a huge baseball fan, right?
18 It's a fight between the Orioles and the Washington Nationals about
19 whether the TV rights can be split into two networks. Is that kind
20 of the gist of it?

21 A It is, and I love the Nationals, yes.

22 Q Okay.

23 (Laughter.)

24 Q I would ask you the same questions if you were submitting
25 it on the other side. And what you found in your expert report is

1 the last sentence of Paragraph 23. And the harm to the Orioles
2 would take form of a diminution of goodwill, marketability, and fan
3 related benefits due to a shrunken television base, correct?

4 A Correct.

5 Q No methodology, right? As to how to calculate that
6 goodwill loss?

7 A That's fair. That's fair. The question that I was
8 answering was had I ever come across goodwill ---

9 Q Right.

10 A -- in my expert work.

11 Q No, I just want -- I know.

12 A Okay.

13 Q I want to stay with it because of the similarities. Why
14 don't you turn ---

15 A Okay.

16 Q -- if you would to Paragraph 27 of this testimony on Page
17 14. We'll wait for the judge to get there.

18 JUDGE SIPPEL: Bear with me. Where are you?

19 MR. COHEN: Twenty-seven, Paragraph 14. Paragraph 27,
20 Page 14. And ---

21 JUDGE SIPPEL: Got it.

22 CROSS EXAMINATION (CONT.)

23 BY MR. COHEN:

24 Q And in the middle sentence, you say, "The associated loss
25 in goodwill, marketing, and fan related benefits defies monetary

1 compensation." Is that what you said?

2 A In this instance, when you split the television
3 territory, which is in the Orioles view, a nuclear war, yes. It
4 would -- the loss would be so large, it would defy quantification.
5 This is used to obtain a preliminary injunction.

6 Q And would you turn to Paragraph 35 on Page 18. And you
7 say in Number 3, "The Orioles' territory would likely be bifurcated
8 preventing the Orioles from accessing many Orioles' fans, resulting
9 in a diminution of goodwill, marketing, and fan-related benefits.
10 None of these harms is curable with monetary damages as the
11 viability of the Orioles and MASN would likely be undermined." Do
12 you see that? All true statements, right?

13 A Yes.

14 Q Okay. So in this testimony, you certainly did not do any
15 empirical work that would provide a foundation for the way you
16 calculated the loss of goodwill in this matter, correct?

17 A I think that's fair. I didn't do empirical work in the
18 MASN case. That's right. That's fair.

19 Q Okay. You can put that to one side.

20 A Sure.

21 Q Now, I want to go back over --

22 JUDGE SIPPEL: Are you going to offer this into evidence?

23 MR. COHEN: Yes, I am, your honor. And I'm not offering
24 it for the truth of what he says, your honor, but the fact of what
25 he said. Exhibit 721.

1 JUDGE SIPPEL: Any objection?

2 WPP: No objection, your honor.

3 JUDGE SIPPEL: 721 is in.

4 (Whereupon, the above-referred to document was received
5 into evidence as Cablevision Exhibit No. 721.)

6 MR. SINGER: And the preliminary injunction was granted.
7 But go ahead.

8 MR. COHEN: I was trying to help you with the Nats fans in
9 the room.

10 MR. SINGER: Okay.

11 CROSS EXAMINATION (CONT.)

12 BY MR. COHEN:

13 Q Now, you testified in response to Mr. Phillips' questions
14 about the profit sacrifice test that you did, right?

15 A Oh, yes.

16 Q And your kind of bottom line conclusion is that
17 Cablevision likely lost money as a result of tiering GSN, fair?

18 A The downstream division, yes. When considered as a
19 stand-alone enterprise likely lost money, yes.

20 Q The distribution arm, just so we're clear --

21 A Correct.

22 Q -- right? Okay. And the idea is to see whether
23 Cablevision, the cable company, sacrificed some profits, right? In
24 it's tiering decisions?

25 A In the --

1 Q Is that --

2 A In the downstream division, yes.

3 Q All right. Now, your original testimony in this case
4 that you submitted in 2013 didn't do a net profit test, right?

5 A No.

6 Q Affirmatively?

7 A With that important adverb, yes. I was responding to a
8 profitability analysis that was offered by your experts.

9 Q Correct.

10 A And I came to a different conclusion with certain
11 refinements, yes.

12 Q Right. And the gist of your testimony in 2013, your
13 affirmative testimony, was that the way that his Honor should
14 assess the efficiency of Cablevision's decision was by looking at
15 a price per rating point analysis, right? Whether or not it was an
16 efficient, economically efficient decision by Cablevision to retier
17 GSN rather than wait?

18 A I kind of got lost with the question. I certainly did a
19 price per rating point analysis in, I think, in all of my reports
20 in this matter. It's not meant to be a substitute for a profit
21 sacrifice test. It's just another efficiency defense that I wanted
22 to explore.

23 Q Right. But it would -- well, you didn't do an
24 affirmative profit sacrifice test in 2013, did you?

25 A That is correct. I didn't offer an affirmative. Instead

1 I offered a rebuttal to the profitability test that was offered by
2 your expert. But I felt that I covered that through my rebuttal.

3 Q Right. And what you did in 2013, and you did it again
4 here, you presented here, if you look at Page 42 of your testimony,
5 Table 7. These are the results, are they not, of your price per
6 rating point analysis?

7 A These are the results of my price per rating point
8 analysis, yes. But it -- I guess I was confused by the question.
9 Because these are definitely the result of a price per rating point
10 analysis. A separate -- it's a separate analysis from the profit
11 sacrifice analysis.

12 Q Understood. We're going to get to --

13 A Okay.

14 Q -- go through each one.

15 A Okay.

16 Q So let me just try to set the stage then. I think you're
17 raising a moot point. Over the course of your expert work in this
18 case, and it's all reflected in Exhibit 301, right? All the
19 various analyses you've done with respect to efficiencies, 301 is
20 your expert testimony?

21 A Yes.

22 Q You've done -- you did -- you do a price per rating point
23 analysis, correct?

24 A Correct.

25 Q You then had a critique of Mr. Orszag's cost-benefit

1 analysis, correct?

2 A Not by itself. That's part of a larger section on
3 profitability.

4 Q Right.

5 A Yes.

6 Q And then, you've added to that a profit -- I have to get
7 the right words, I have to say, and I will, profit sacrifice test,
8 right?

9 A Correct. The two from the DC Circuit. The profit
10 sacrifice and the --

11 Q And the --

12 A -- net profit sacrifice.

13 Q And the net profit. So four different analyses?

14 A I would --

15 Q Four related analyses?

16 A Yes. I would say there's three hypotheses that we're
17 exploring. And all of the profit sacrifice tests go into one
18 bucket.

19 Q Okay. So let's just start with the price per rating
20 point analysis, right?

21 A Right.

22 Q That's something you still stand behind, right?

23 A It's something that I want to run to ground. It's a very
24 common efficiency justification for not carrying someone is if you
25 think they're mispriced. If you think they're not offering --

1 Q Right.

2 A -- value.

3 Q And what you conclude in Table 7 is that the price per
4 rating point for GSN is [REDACTED] cheaper than WE TV, right?

5 A Are you looking at the national price per rating point or
6 the New York? I do it two ways there. Are you in Table 7? I'm
7 sorry.

8 Q I'm on Table 7. So on a -- okay. Fair enough. On a
9 national basis, you find a difference of [REDACTED], right? Between
10 GSN and WE?

11 A Yes.

12 Q And on a New York basis, you find a difference of [REDACTED]
[REDACTED], correct?

14 A Correct.

15 Q Okay. Now are you aware that GSN prepared a calculation
16 along these lines in connection with a meeting that it held with
17 Cablevision in February of 2011 after the retiering decision was
18 made?

19 A I can't recall sitting here.

20 Q Okay. Why don't you look at Cablevision Exhibit 162.

21 A Okay.

22 Q First let's look at the first page, and then I'm going to
23 take you to a specific page. You see this is a presentation from
24 GSN to Cablevision dated February 8, 2011?

25 A Yes.

1 Q Okay. Turn please to Page 25 of 28.

2 A Twenty-five of 28?

3 Q Twenty-five of 28. The page that says GSN is a great
4 value. You see that, sir?

5 A Yes.

6 Q And look at the source. The source is from Nielsen, Q4
7 of '10. Do you see that?

8 A Mm-hm.

9 Q And it says, value equals license fee divided by HH
10 rating point, correct?

11 A Yes.

12 Q That's what your analysis is, right? Profit per rating
13 point.

14 A Correct.

15 Q And look what GSN prepared. It said that in fact WE, at
16 [REDACTED] total day CPP, was in fact a better value than GSN at [REDACTED]
[REDACTED]. Just the opposite of what you found, correct?

18 A Well, actually in one of my iterations, I do New York two
19 ways if you recall, right? And the New York using household
20 ratings that Tim -- that Mr. Brooks uses is Paragraph 69. I get
21 nearly identical price per rating points for the two networks. I
22 basically did it every which way I could possibly do for which I
23 had the available data.

24 Q Right. But your conclusion in your testimony is that GSN
25 is in fact a better value than WE, right? Is that --

1 A And I just want to be careful. I pointed you to the
2 wrong paragraph. It's Paragraph 70 where I have --

3 Q Okay.

4 A -- it's a little higher for GSN. It's [REDACTED] per
5 rating point.

6 Q And [REDACTED] --

7 A [REDACTED] -- right.

8 Q -- for WE? Right. But your overall conclusion from
9 looking at all the data --

10 A Yes.

11 Q -- is that GSN is a better value than WE on a price per
12 rating point basis, correct?

13 A Certainly if you use the household viewing data that I
14 used in my Table 7, yes.

15 Q But when GSN presented -- prepared in its business, in
16 its ordinary course of business, was just the opposite, correct?
17 That WE was better value than GSN, true?

18 A Let's see --

19 Q Tenth for --

20 A Slightly better.

21 Q Slightly better.

22 A They were almost equal, yes.

23 Q Now, let's stay with your analysis.

24 A Okay.

25 Q I think that you give a source in Table 7, right? For

1 where you get this information from?

2 A Yes.

3 Q Fourth Quarter 2010 data?

4 A Yes.

5 Q Okay. And in fact, I think you cite to a document, you
6 see 00428165 in the second line of the sources?

7 A Just one second, I want to just orient myself. I'm using
8 the total day, 9:00 to 4:00 p.m. I just want to see what this one
9 is. I'm sorry. Give me a second. The source here -- the source
10 note in the bottom of the GSN document doesn't let me know which
11 ratings point they used in the denominator.

12 Q Okay. All right.

13 A Okay. Sorry. Go ahead.

14 Q For the New York DMA ratings, you use a document that had
15 a production number, CV GSN production number of 428165, right?

16 A Yes.

17 Q Okay. And that's the source that you used to conclude
18 that for the New York DMA, GSN was [REDACTED] cheaper than WE?

19 A Well, with one caveat. Because you remember in Paragraph
20 70, I used the ratings data that Mr. Brooks was using in his
21 analysis and I got --

22 Q Right.

23 A -- [REDACTED].

24 Q Right. But this is the source for the analysis that's in
25 the last row of Table 7, correct?

1 A That is correct.

2 Q Okay. Let me share with you -- mark this Cablevision 705
3 for identification.

4 (Whereupon, the above-referred to document was marked as
5 Cablevision Exhibit No. 705 for identification.)

6 Q Okay. You see that this -- confirm for yourself that the
7 Bates numbers line up.

8 A Bates numbers?

9 Q The number at the bottom --

10 A No I got it.

11 Q -- the CV GSN number.

12 A That looks right.

13 Q Now, you used Q2 of 2010, right?

14 A Yes.

15 Q Okay. And in Q2 of 2010, GSN's ratings were higher than
16 WE, correct?

17 A Well, I've folded the page to show me in this microscopic
18 font that we're at [REDACTED] for GSN, right? And then I have to go find
19 WE TV.

20 Q Point [REDACTED]?

21 A Yes, [REDACTED].

22 Q Right.

23 A And those are the numbers that appear in my --

24 Q Now look at the Third Quarter of 2010 in the microscopic
25 font.

1 A Okay. I'll try again. Okay, [REDACTED] for --

2 Q For GSN.

3 A -- GSN.

4 Q And [REDACTED] for WE, right?

5 A Yes.

6 Q Okay. So if you'd used the Third Quarter rather than the
7 Second Quarter for 2010, using this same data, you would have
8 gotten a different result, right?

9 A You don't -- I don't know because the difference in the
10 fees in the numerator are so big that I don't know if that would
11 tip it. But that's why in Paragraph 70 I use all of 2010 data. So
12 I recognize that household viewing shares are sensitive to the
13 quarter you look in. And because of sensitivity analysis, I did it
14 again in Paragraph 70.

15 Q Right.

16 A I don't -- I'm not looking for -- there's no reason for
17 the number to be of a certain magnitude. What I want to see is,
18 would there be plausible efficiency justification for not carrying
19 GSN if it was badly mispriced? Any way that I cut the data, I
20 can't come to that conclusion.

21 Q I have a different question for you. You had a document
22 in front of you that had four quarters of data, right? In one of
23 those quarters, the one that you used, GSN's ratings were higher
24 than WE, right?

25 A Correct.

1 Q Right.

2 A Correct.

3 MR. PHILLIPS: Well, I think more than one, sir.

4 MR. COHEN: Could you let me finish the question, please,
5 and not interrupt the cross?

6 JUDGE SIPPEL: I think he's trying to be helpful.

7 MR. COHEN: All right. I'll --

8 JUDGE SIPPEL: I hear you. No, you're entitled to do
9 cross.

10 CROSS EXAMINATION (CONT.)

11 BY MR. COHEN:

12 Q And in two of the quarters that I just went through with
13 you, the reverse was true, right?

14 A Oh, I haven't done it for each quarter. But what I was
15 trying to do so that the reader didn't have to -- I'm doing this by
16 memory because this table is very old now. Is that I wanted to do
17 it in a way that's consistent with the national data. My national
18 data was for 2Q, so I went to the 2Q of the state. But then -- or
19 sorry for the DMA. But then just to make sure that my DMA data
20 wasn't sensitive to the quarter, I did it for all quarters in 2010.
21 That's what Paragraph 70 is about.

22 Q And it's better to look at more data than fewer data,
23 isn't it? Generally?

24 A Sure.

25 Q Okay. So when you look at Paragraph 70, you actually

1 reach a different conclusion in your own Paragraph 70.

2 A I actually reach the same conclusion. The same --

3 Q Let me please finish the question.

4 A Okay. Oh, I'm sorry.

5 Q And then you can give me an answer, all right?

6 A I'm sorry.

7 Q The conclusion that you reach in Paragraph 70, I'm trying
8 to slow down --

9 A Okay.

10 Q -- and you're not used to the new cadence of my
11 conversation.

12 A Okay.

13 Q All right. Or my questionings. Paragraph 70, you found
14 that the price per rating point for GSN was actually higher than it
15 was for WE --

16 A By [REDACTED].

17 Q -- correct?

18 A By [REDACTED]. But my findings or my conclusions about this
19 don't change as I toggle from one quarter to the next. I still
20 conclude that GSN is not mispriced relative to WE TV. That is,
21 Cablevision could not cite to the price as a basis for why they
22 didn't carry it.

23 Q And it doesn't make a difference to that analysis whether
24 GSN is [REDACTED] cents cheaper per rating point than WE? Or [REDACTED] cents
25 cheaper per rating point than WE?

1 A No. What would cause tension within my draft is if I did
2 it one way, and GSN looked really, really expensive and I did it
3 another way, and GSN looked really, really like a better value.
4 And that didn't happen.

5 MR. COHEN: Okay. I'm going to offer 705, your honor.

6 WPP: No objections.

7 JUDGE SIPPEL: Proceed.

8 (Whereupon, the above-referred to document was received
9 into evidence as Cablevision Exhibit No. 705.)

10 CROSS EXAMINATION (CONT.)

11 BY MR. COHEN:

12 Q Now, sir, the second thing that you did in your 2013
13 testimony, and I think it's also reflected here, was that you
14 presented your criticisms of Mr. Orszag's analysis of the cost and
15 benefits of retiering. Do you remember that?

16 A In this most recent report?

17 Q And in the 2013 testimony. And I've been asked by the --

18 A Okay.

19 Q -- Enforcement Bureau to refer -- not to refer to it as
20 testimony. So you have your written direct testimony today --

21 A Yes.

22 Q -- and then there was written direct testimony that was
23 prepared in 2013, but the trial was adjourned. Do you remember
24 that?

25 A Right.

1 Q Okay. And in both of those, you actually did a critique.
2 Before you did your own affirmative analysis of profit sacrifice,
3 you did a critique of Mr. Orszag's cost-benefit analysis, right?

4 A Correct.

5 Q Okay. And in 2013, that wasn't your affirmative
6 testimony, you thought the affirmative way to look at efficiency
7 was to do price per rating point, correct?

8 A Not by itself. That was one approach. Remember, the one
9 that we discussed earlier today was the peer review.

10 Q And the peer review.

11 A But peer review is --

12 Q Okay.

13 A -- actually speaks --

14 Q Fair enough.

15 A -- closer to profit --

16 Q We're going to come to that.

17 A -- sacrifice, right?

18 Q Okay.

19 A So, there you go.

20 Q Okay. Now, I have your testimony from 2013 in your book.
21 Would you look at GSN 223? You see that? Just verify for
22 yourself. I'm going to ask you just about one page if this is the
23 sworn testimony that you prepared, you actually signed on March 12,
24 2013?

25 A Sure.

1 Q Okay. Now, would you please turn to Paragraph 67, a
2 carryover of the paragraph on Page 42. So Page 42, Paragraph 67.
3 I'm focused on the first line. Let me know when you're there. And
4 I'll wait for the judge to get there.

5 JUDGE SIPPEL: Forty-two.

6 MR. COHEN: Page 42.

7 CROSS EXAMINATION (CONT.)

8 BY MR. COHEN:

9 Q You see that? And what you said in 2013 was that, "Mr.
10 Orszag's post-tiering profitability analysis, notwithstanding its
11 serious shortcomings as described below, cannot validate
12 Cablevision's decisions as these precise outcomes could not have
13 been known ex ante to Cablevision." True statement, right?

14 A Well, I certainly said --

15 Q Can you answer that yes or no?

16 A Oh. Is it a true statement?

17 Q Correct.

18 A No. I'm having trouble -- I don't understand I guess the
19 nature of the question. It's certainly -- you read it truthfully.

20 Q Well, was it your truthful testimony? You submitted that
21 report under oath.

22 A Oh, okay.

23 Q When you wrote that a post -- an ex post analysis could
24 not validate Cablevision's decisions because the precise outcomes
25 could not have been known ex ante, was that testimony truthful?

1 A Oh. Well, certainly at the time that I wrote it, it was
2 truthful.

3 Q Okay. And what you have presented today in your net
4 profit test and your profit sacrifice test is in fact an ex post
5 evaluation, correct?

6 A Yes.

7 Q After the fact, that's what we're talking about.

8 A Oh, after the DC Circuit told me I needed to do it, yes.

9 Q Well, sir, I'm asking you about what you did. Are you --
10 your economic analysis turns on what the DC Circuit said?

11 A In part, yes.

12 Q Okay. So in 2013, you thought an ex post analysis could
13 not be used to evaluate Cablevision's decision, correct? Yes or
14 no?

15 A About -- if I had written the DC Circuit opinion, I would
16 have come to a different conclusion.

17 Q I'm not trying to deal with the DC Circuit opinion and
18 whether you were affirmed or reversed. I could care less about
19 that. I want to deal with what your opinion was as an economist in
20 2013. The sworn testimony that you submitted in 2013 was that you
21 could not do an analysis after the fact based on information that
22 was not available to Cablevision before the retiering because the
23 precise outcomes could not have been known to Cablevision. That's
24 what you said, correct?

25 A I said that at the time.

1 Q Right?

2 A Yes.

3 Q And you believed it?

4 A I believed it at the time, yes.

5 Q Right. And what you have done in your net profit test
6 and your profit sacrifice, current sacrifice test, is now to do an
7 ex post profitability evaluation based on precise outcomes that
8 could not have been known ex ante to Cablevision. Exactly what you
9 criticized Mr. Orszag for in 2013, correct?

10 A I did --

11 Q Yes or no?

12 A No. I didn't do it to validate it. I did it to reject
13 an efficiency justification.

14 Q So you could use ex post to invalidate but not use ex
15 post to validate? Is that your testimony?

16 A This would not be my preferred --

17 Q Right.

18 A -- approach. I'm doing this because I think it is a new
19 evidentiary requirement.

20 Q Okay. And I understand that. But what I'm saying to you
21 is that the criticism that you had in 2013 that led you to write
22 this in criticism of Mr. Orszag was, if you're looking at this from
23 the point of view of Cablevision, making a decision, a tiering
24 decision, assume they just wanted to make an efficiency decision,
25 they wouldn't know how many people would complain with precision,

1 correct?

2 A They wouldn't know precisely, but they could make an
3 informed guess based on the intensity of viewership of GSN viewers.

4 Q And they wouldn't know how many people would churn,
5 correct?

6 A They wouldn't --

7 Q With precision?

8 A They wouldn't know with precision.

9 Q All right. And if they -- they could have just made a
10 mistake, right? Without trying to discriminate at all?

11 A That is true. But if they made a mistake, they could
12 have also reversed, and they did not. Once they learned the
13 information, once the information was realized, that [REDACTED]
14 customers would be upset, they could have pulled out.

15 Q Okay.

16 A And they didn't do it.

17 Q So what you now do are ex post analyses on the basis of
18 information that was not available to Cablevision when they made
19 their decision. That's what the rest of this exercise is about,
20 right?

21 A Correct.

22 Q Okay. Now, when you were doing your analysis in 2013,
23 the criticism, the original, and you repeat it here, the original
24 criticism of Mr. Orszag. The first thing you did, right, I'm now
25 going back to -- what should we call that test? This is the test

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1 with mitigation?

2 A Yes.

3 Q Okay. Is that -- would that be fair?

4 A Yes. Profit sacrifice with mitigation.

5 Q With mitigation?

6 A Yes.

7 Q Okay. Just one second.

8 MR. COHEN: Has Mr. Feldman seen these churn analyses?
9 These hypothetical churn analyses? I just don't know.

10 MR. PHILLIPS: I don't think so.

11 JUDGE SIPPEL: I don't think so.

12 MR. COHEN: Then I think we have to close the courtroom
13 for this. Okay. Thank you, judge. I'm sorry, sir.

14 (Whereupon, the above-entitled matter entered into a
15 closed session at 3:03 p.m.)

16 CROSS EXAMINATION (CONT.)

17 BY MR. COHEN:

18 Q Now in 2013, in fairness to you, it was a rebuttal to Mr.
19 Orszag, it was not your affirmative opinion, correct?

20 A Correct.

21 Q Okay. So the first thing you did was you said, Mr. --
22 and again, Mr. Orszag figured out what the churn was, and I'm going
23 to make corrections to his model, right? Because I find that he
24 did the churn analysis incorrectly, fair?

25 A Right. He ignored the existence of the subsidy, correct.

1 Q Right. And you redid the analysis and concluded, as you
2 testified today, is that the model that you came up with showed
3 that the churn would be somewhere between [REDACTED] and [REDACTED]
4 subscribers, right?

5 A That was the actual churn that occurred owing to the
6 tiering episode in spite of the presence of a subsidy.

7 Q Right. And you said on the net -- on the detriment side
8 of the Cablevision equation, if he wanted to figure out the
9 efficiency of this decision that the loss to Cablevision included
10 the midpoint, right, [REDACTED] subscribes times [REDACTED] per month. Which
11 was the lost profit to Cablevision from retiering, right?

12 A That's using the most conservative estimate possible for
13 the margin loss of just the family tier.

14 Q Well --

15 A Of course when you lose a customer, you're going to lose
16 the entire video margin.

17 Q In 2013, and look at your testimony, 223, the only number
18 that you presented for loss was [REDACTED] per subscriber, correct?

19 A Correct.

20 Q And today, what you've said is, well it was [REDACTED] in 2013,
21 and it's [REDACTED] in the text of the report today, today what you said
22 it's more realistic to use [REDACTED]. A higher number. Right?

23 A It is more realistic.

24 Q All right. That number was available to you in 2013, was
25 it not?

1 A It probably was, yes.

2 Q Right. So why didn't you use the more realistic number
3 in 2013 when you submitted sworn testimony and said that the loss
4 per subscriber was [REDACTED] per subscriber?

5 A Well, it wouldn't have changed the result had I used it,
6 right?

7 Q But you --

8 A Because -- by even using the more conservative number,
9 you needed a ratio of [REDACTED] to one. Had I used a more aggressive --
10 or sorry, a more realistic number of the [REDACTED] margin, the ratio
11 would have had to have been even higher. It wouldn't have changed
12 anything.

13 Q You could have picked any number. But the number that
14 you selected in 2013 and that was your sworn testimony that you
15 were prepared to take to trial, Exhibit 223, right?

16 A Sure.

17 Q GSN 223?

18 A Correct.

19 Q Was [REDACTED]. And nowhere in that 50 or 60 or 70 page report
20 did you ever suggest that the loss per subscriber was [REDACTED], true?

21 A That's correct.

22 Q Okay.

23 A I'd like to actually -- I just -- what I will agree to is
24 that I used [REDACTED] there, but I don't have the entire report
25 memorized. It's conceivable that I used the same language that

1 said this is extremely conservative because in reality you would
2 lose the entire margin.

3 Q You used language that said it was conservative. I will
4 say, and if I'm wrong, I'm sure Mr. Phillips will fix it on
5 re-direct, that nowhere in that testimony from 2013 did I see any
6 reference to the [REDACTED] per subscriber that you testified to before
7 your honor today. Fair?

8 A That's fair.

9 Q Okay.

10 JUDGE SIPPEL: Where did you come up with the [REDACTED] number?

11 MR. SINGER: Okay. Is it okay if -- I'm just going to
12 explain to the judge?

13 MR. COHEN: Well, he asked you a question. It's okay with
14 me. Anything he wants is okay with me.

15 MR. SINGER: The -- GSN used to be carried on the Family
16 Tier. And the Family Tier has a revenue figure attached to it.
17 It's very small. And you can associate that with a margin loss as
18 well. Okay. But it turns out that in reality, a lost subscriber
19 represents a loss not just of the Family Tier, but of all the tiers
20 on which that subscriber currently subscribes. Right?

21 So what I did in my affirmative case for the 2015
22 testimony is I went and I looked up the average Cablevision video
23 revenue per subscriber per month, which was on the order of [REDACTED].
24 And I used that as a sensitivity to complement or in addition to
25 the lower revenue that's attaching only to the Family Tier. I show

1 it both ways. I do it once with [REDACTED] as the loss margin. And then
2 I do it again with the [REDACTED] as a loss margin.

3 It's my testimony today, and it still is that if you ask
4 me what's the better of the two with respect to guessing or
5 estimating, what's the loss to Cablevision, it's the lost video
6 revenues. It's the totality of the videos, not just the tiers, not
7 just the Family Tier.

8 And in fact, even that's conservative. Because, your
9 honor, when you lose a customer, you don't just lose his or her
10 video revenues. You could potentially be losing all the other
11 revenues that come along. Broadband revenues for example if
12 they're buying a bundle. And I'm not attempting to quantify those
13 at all.

14 CROSS EXAMINATION (CONT.)

15 BY MR. COHEN:

16 Q Everything that you just explained to the presiding
17 judge, you knew in 2013 when you submitted your sworn testimony,
18 correct?

19 A Correct.

20 Q Okay. Now, the next thing that you did in 2013 and which
21 you replicate in your analysis here today, is you said there was
22 another loss to Cablevision of the subsidy for the [REDACTED]
23 subscribers who had to be subsidized, right, of [REDACTED] per month?

24 A I certainly am aware of that, but I'm not sure if it's
25 entering into the calculus of any of my profitability assessments.

1 Q In 2013?

2 A I'd have to go back and look at my 2013.

3 Q It's right in front of you, Exhibit 223.

4 A Well, I'm not contesting that I calculated the number,
5 the amount of the subsidy. But I'm not sure that it enters into
6 the calculus in my rebuttal to Mr. Orszag's affirmative case.

7 Q Look at 223, Paragraph 75, sir.

8 A Okay.

9 Q I'll read it. "The costs of retiering fall into two
10 basic categories. First, approximately [REDACTED] customers called
11 Cablevision to complain in response to GSN's retiering. By April
12 of 2011, Cablevision had [REDACTED] [REDACTED] [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED], these customers cost Cablevision
16 approximately [REDACTED] per subscriber for each month during which the
17 subsidy was provided." And then you go on to say that, second, to
18 the extent that some households canceled their Cablevision
19 subscriptions, you assume conservatively, as you said, a [REDACTED] per
20 month sub loss, right?

21 A Margin loss, right.

22 Q Margin loss.

23 A Right.

24 Q So in fact, both of these components, the [REDACTED] loss,
25 right, for the subsidized customers, and the margin loss for the

1 disconnecting customers, that's what constituted your testimony on
2 loss in 2013, right?

3 A It's in the preamble, I'll grant you, in 75. But when I
4 go to do the calculus, I end up not using that input.

5 Q Because you find a loss even without it?

6 A Correct.

7 Q Okay. But not because you didn't think it was a loss?

8 A It just -- once you get to such a loss, look we needed to
9 get a ratio or you needed to get a ratio of nine, you only got a
10 ratio of two, piling things on top on the cost side is not
11 necessary.

12 Q And then you turn to the benefit side in 2013. And on
13 the benefit side, what you said was that Cablevision got a certain
14 number of subscribers who joined the Sports Tier, who paid for it,
15 right?

16 A Right.

17 Q All right. And you said that was [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 A [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Q Right. Okay. And in 2013, you said that the fact that
24 Cablevision was going to save, what was the number you used today,
25 [REDACTED] million?

1 A No, [REDACTED] a month.

2 Q [REDACTED] a month, thank you, was a benefit that you
3 didn't take into account.

4 A I did.

5 Q You did not take it into account in 2013, did you?

6 A I did.

7 Q How?

8 A I explained that because that amount is actually less
9 than the amount that they would save by tiering their own, that it
10 didn't have to be considered for this calculus using mitigation.

11 Q Didn't have to be considered. So you used mitigation for
12 the license fees that they didn't have to pay, but you said it was
13 balanced out by the fact that they would have paid even more --
14 saved even more with WE?

15 A Correct.

16 Q Okay.

17 A If you wanted to compartmentalize it, it's closer in
18 spirit to what the DC Circuit is calling the net profit --

19 Q Right.

20 A -- sacrifice test.

21 Q That's exactly my point. If you were doing just a profit
22 sacrifice test that looked solely at the calculation about what
23 happened with respect to the decision to retier GSN, you would have
24 to take into account the [REDACTED] a month in savings, correct?

25 A If you ignored the relative losses that would be incurred

1 with respect to tiering their own, yes. You would have to.

2 Q Yes. And whether it was ex post or ex ante, the one
3 thing that Cablevision could determine with precision when it
4 decided to retier is that it would save [REDACTED] a month in
5 subscriber fees, right?

6 A Correct.

7 Q No guess work there. No model. No regression. Straight
8 numbers, math, right? Subscribers times [REDACTED] per month, right?

9 A Correct.

10 Q Okay. Now, let's talk about your, hopefully I've got it
11 right, the profit sacrifice test, right?

12 A Yes.

13 Q Okay. Now the profit sacrifice test is a test that
14 you've done in connection with your current testimony, Exhibit GSN
15 301, based on your reading of the DC Circuit opinion, right?

16 A Correct.

17 Q Okay. So the first thing that you do in 2015 is you ask
18 the same question you asked in your criticism of Mr. Orszag in
19 2013. How many customers are going to leave? Right?

20 A Correct. In the absence of a subsidy, correct.

21 Q In the absence of a subsidy because you have concluded,
22 have you not, that the DC Circuit formula did not allow for
23 mitigation?

24 A I've concluded that it didn't mention mitigation, and one
25 reading of the text suggests they want you to estimate what would

1 happen from a tiering episode. Period, end of story.

2 Q Wouldn't a rational, efficient cable operator in the real
3 world take steps to mitigate its loss if it found out that people
4 were disconnecting as a result of the retiering?

5 A Sure.

6 Q Right. And shouldn't economics follow the real world --

7 A Well, I --

8 Q -- instead of your reading of a line in a DC Circuit
9 opinion?

10 A Sure. And that's why I did it with and without
11 mitigation strategies.

12 Q Okay.

13 A I'm not here just saying that I know it's only one way --

14 Q Okay.

15 A -- and it's got to be without mitigation --

16 Q So --

17 A -- strategies.

18 Q So let's talk about it without mitigation strategies.

19 That's the first test you did. The profit sacrifice test, right?

20 A Correct.

21 Q So on the one hand, you have to do subscriber losses. So
22 you've got the same analysis. Between [REDACTED] and [REDACTED] customers,
23 right? As you did 2013? I'm sorry for not finishing that
24 question.

25 A Correct. That's the beginning of the churn. Those are

1 the ones who left even in the presence of a subsidy.

2 Q Correct. And if you look at your testimony today, we're
3 going to have to toggle back and forth to use your words --

4 A Okay.

5 Q -- 301 is your current testimony. Look at Footnote 147,
6 unbelievably enough. I shudder to think how many footnotes Orszag
7 has. It's on Page 53. Yes -- 51.

8 A You want me to look at Footnote 147?

9 Q Here's what I want to tell you. In Footnote 147, what
10 you say is, "My number of churning customers --

11 A I'm sorry. We must be on different ones.

12 Q I'm sorry.

13 A Because mine says Tennis Channel Initial Decision.

14 Q Okay. I'm back in your testimony from today.

15 A Oh.

16 Q When I said toggle --

17 A Okay.

18 Q -- back and forth --

19 A Okay.

20 Q -- I meant -- yes.

21 A Okay.

22 Q Go to your testimony from today --

23 A Okay.

24 Q -- the binder that Mr. -- sorry Judge.

25 JUDGE SIPPEL: It's all right.

1 MR. COHEN: I have a bad habit of doing that.

2 JUDGE SIPPEL: No.

3 MR. COHEN: It's in that spiral that Mr. Phillips gave
4 you.

5 JUDGE SIPPEL: I know where it is. I just got to find it.
6 Because I found it in 2013, and now I've got to find it from today.
7 It's 147?

8 MR. SINGER: 140 what?

9 MR. COHEN: Footnote 147 on Page 51 says -- ultimately ask
10 the question, I think it's not worth all this effort.

11 JUDGE SIPPEL: All right.

12 CROSS EXAMINATION

13 BY MR. COHEN:

14 Q What it says is you're using the same methodology for the
15 [REDACTED] to [REDACTED] subscribers as you did back in 2013. Same
16 regression. Isn't that what that says?

17 A I want to believe you, but I can't get onto your
18 footnote. But I certainly am not changing my churn model. My
19 churn model is what it is. It's --

20 Q Okay.

21 A -- the [REDACTED] to [REDACTED].

22 Q Well, I don't want you to believe me --

23 A Okay.

24 Q -- I want you to satisfy yourself. So are you having
25 trouble finding the footnote?

1 A I'm at 147 of this one, 301.

2 Q And it says see Exhibit 223, Singer Direct Testimony,
3 Appendix C?

4 A Yes.

5 Q Yes. That's --

6 A Oh, I thought you were asking me to read along with
7 something --

8 Q Yes.

9 A -- on that footnote. Okay.

10 Q What I wanted -- I want you to agree with me, if it's
11 true, that Exhibit 223, Singer Direct Testimony, Appendix C is the
12 regression that you did in 2013 to come up with the [REDACTED] to [REDACTED]
13 number. And you have 223, that's why I was doing the toggling
14 thing. So go to Appendix C of 223, GSN 223. Not the current
15 testimony, sir.

16 A Okay. Appendix C?

17 Q Yes.

18 A Okay.

19 Q GSN -- it's Page 81, the next to last page --

20 MR. PHILLIPS: Appendix B?

21 MR. COHEN: C.

22 MR. PHILLIPS: C.

23 CROSS EXAMINATION

24 BY MR. COHEN:

25 Q Of your 2013 -- it's actually Table A3 in Appendix,

1 whatever appendix it is.

2 A Okay. I'm in that -- I'm in -- it starts on Page 79,
3 customer churn.

4 Q Right.

5 A Yes.

6 Q But the regression that supports it is Table A3 on Page
7 81, right?

8 MR. PHILLIPS: I know this is -- I'm sorry.

9 MR. COHEN: No, it's a little confusing.

10 MR. PHILLIPS: I have this as Appendix B, not Appendix --
11 or I have it as B. Oh, I've got it. I see it, sorry.

12 MR. COHEN: In B it takes up like -- well, here. All we
13 need to do is get to Table A3.

14 MR. PHILLIPS: Got it.

15 MR. COHEN: A very long way of getting to Table A3. Not
16 very artful.

17 CROSS EXAMINATION

18 BY MR. COHEN:

19 Q All right. This is your regression, right? That leads
20 you to conclude that between [REDACTED] and [REDACTED] subscribers actually
21 churned as a result of the retiering, right?

22 A Let's see. You're on Page 78?

23 Q Eighty-one.

24 A Oh, 81. Yes. And that table of course shows up as an
25 appendix in the 2015 report as well.

1 Q Okay.

2 A Okay.

3 Q I'm always following your report.

4 A Okay.

5 Q Right. And look down at the bottom. You see there's one
6 star under the chart, under two stars, three stars?

7 A Right.

8 Q One star of p is less than .1. That means that it's
9 significant at a 10 percent confidence level?

10 A Correct.

11 Q And two stars, p is less than .05. That means that it's
12 statistically significant at a five percent confidence level?

13 A Correct.

14 Q And just so we're clear, to be statistically significant
15 at a five percent confidence level means that there is a 95 percent
16 chance that the result you see is not random, right?

17 A It's probably easier to say the other way.

18 Q Say it the other way, you'll do it --

19 A Right.

20 Q -- better than I will.

21 A Only a five percent chance that you could have obtained
22 that result by chance.

23 Q By chance. Right. So you're 95 percent certain you've
24 got what you've got, and there's a five percent chance that it's
25 random, right?

1 A Correct.

2 Q And if you have a one percent confidence level, there's
3 only a one percent chance that it's random?

4 A Correct.

5 Q And the three confidence levels of statistical
6 significance that you report in this table are one percent, five
7 percent, and 10 percent?

8 A Correct.

9 Q Now, your churn analysis --

10 JUDGE SIPPEL: Wait a minute, is that one or is that .10?

11 MR. COHEN: Point 10 is 10 percent, .05 is five percent,
12 and .01 is one percent, correct?

13 MR. SINGER: Correct.

14 JUDGE SIPPEL: I got it. Okay.

15 MR. COHEN: Okay.

16 CROSS EXAMINATION

17 BY MR. COHEN:

18 Q Now the results that you report in this churn analysis
19 that lead you to conclude that there are between [REDACTED] and [REDACTED]
20 subscribers who would have left, they're not statistically
21 significant at a one percent level are they?

22 A At a one percent? Well, which parameter are you speaking
23 of?

24 Q GSN share.

25 A So you're in Specification 4?

1 Q Specification 4.

2 A Right. That is not statistically significant at the one
3 percent level.

4 Q And it's not statistically significant at the five
5 percent level, is it?

6 A No.

7 Q And it's not statistically significant at the 10 percent
8 level, is it?

9 A No.

10 Q And if you turn to Page 82 --

11 JUDGE SIPPEL: Now, hold on just one second.

12 MR. COHEN: I'm sorry, your honor.

13 JUDGE SIPPEL: When you indicated 4, are you talking about
14 the fourth column?

15 MR. SINGER: Yes.

16 JUDGE SIPPEL: In A3?

17 MR. SINGER: Yes. And he wants -- he's looking at the
18 p-value. It's the number that's in parentheses. It's the .116.

19 JUDGE SIPPEL: Yes, I see it.

20 MR. SINGER: That would be significant at the 15 percent,
21 but not at the 10 percent level.

22 JUDGE SIPPEL: And what is the PR Churn? Up on the -

23 MR. SINGER: Oh. That's what you're trying to predict.
24 Probability of churn is the dependent variable.

25 JUDGE SIPPEL: Probability.

1 MR. SINGER: Right.

2 JUDGE SIPPEL: PR means probability.

3 MR. SINGER: Correct.

4 JUDGE SIPPEL: Okay. Thank you. Go ahead. Sorry.

5 CROSS EXAMINATION

6 BY MR. COHEN:

7 Q Now when you churn, and you explain this on the next
8 page, the last page of Exhibit 223, you say, although the
9 coefficients are not estimated with a high degree of statistical
10 precision, the coefficient on GSN Share 2010 in column 4 is
11 significant, as you just said, at the 11.6 percent level. Correct?

12 A Yes.

13 Q Now, in every analysis that you presented in 2013 and in
14 2015, you footnoted with little asterisks whether things were
15 statistically significant at a one percent, five percent, or a 10
16 percent level, correct?

17 A Correct.

18 Q And if I were -- if we were to hold you to one of your
19 own levels of statistical confidence, this churn number of 2,300
20 would not be statistically significant at any of those three
21 levels, correct?

22 A If you were to hold me to --- I don't understand that.

23 Q I'm going to ask a better question. Terrible question.

24 A Because I'm not -- I don't think there's anything magical
25 about 10 percent.

1 Q Let me ask you a different question.

2 A Okay.

3 Q Your estimate that at the top of the range, that [REDACTED]
4 subscribers would have churned, that estimate is not statistically
5 significant at a one percent level, is it?

6 A Yes. We've been through this. It's not at one, not at
7 five, not at ten.

8 Q That's all I wanted to see. Okay. As long as we've got
9 it. Now -- you can put that aside. Now in 2013, you treated the
10 issue of customers who got a subsidy in connection with a loss by
11 Cablevision, right? You took that into account in your
12 cost-benefit analysis in 2013?

13 A Now remember when I come to that ratio, it's -- the
14 numerator is the gains from newly paying S&E subscribers. And the
15 denominator is churn.

16 Q Let me ask a different question.

17 A Okay.

18 Q Let's focus on your profit sacrifice test today. Let's
19 forget about 2013.

20 A Okay.

21 Q The profit sacrifice test that you did today says, with
22 respect to those [REDACTED], all right, this

23 JUDGE SIPPEL: Give me that number again?

24 MR. COHEN: [REDACTED] customers complained.

25 JUDGE SIPPEL: Right.

1 MR. COHEN: And got a subsidy, correct?

2 THE WITNESS: Correct.

3 BY MR. COHEN:

4 Q In fact, [REDACTED] customers complained but only [REDACTED] got
5 a subsidy, roughly?

6 A I'm with you.

7 Q Right? And in your profit sacrifice test today, your
8 assumption is that every single one of those [REDACTED] subscribers who
9 got a subsidy would have disconnected if they didn't get it, right?

10 A We've been through this today, it's not my only
11 assumption. That is one way that I do it, but as I testified
12 earlier today, you don't need a 100 percent of the [REDACTED] to defect.
13 You can actually show this to be a profit sacrifice with roughly 50
14 percent of those customers defecting.

15 Q Well, forgetting what you need, all right, forgetting
16 what you need, what you testified to in writing in your testimony
17 today was that all [REDACTED] would have left, right?

18 A So, no, I'm not going to -- sitting here -- I'm not going
19 to sit here today and tell you that I know that all [REDACTED] would
20 have left. I've done one scenario with that assumption, but I've
21 done other scenarios where you have fewer than 100 percent.

22 Q Okay. Why don't you look at page 53 of your report, sir?

23 A Okay.

24 JUDGE SIPPEL: How do you know some of these [REDACTED]
25 that got the subsidy, how do you know none of those might have

1 left?

2 THE WITNESS: My opinion is that a good fraction of those
3 would have left in the absence of a subsidy.

4 JUDGE SIPPEL: Okay. That's a good assumption.

5 THE WITNESS: Thank you. And --

6 JUDGE SIPPEL: But I'm saying, supposing I'm one of those
7 guys, I'm an outlier of some type and I say I don't care if they
8 gave me a damn subsidy, or I came home, I was on a trip and my wife
9 says, here, we got a subsidy. I don't want a subsidy, get rid of
10 that. I'm working with this.

11 THE WITNESS: Well, then that would make my analysis even
12 more conservative.

13 JUDGE SIPPEL: But, no, how do you know they're not --
14 well, some people that did that?

15 THE WITNESS: How do we know that there aren't even more
16 churners who got the subsidy and, nevertheless, still defected?

17 JUDGE SIPPEL: That's right.

18 THE WITNESS: Yes. I think that that would actually make
19 my analysis more conservative. I have to think through that.

20 The only people that I'm allowing to churn when I do
21 these simulations are the folks who called and complained and got
22 a subsidy and then those who churn in the actual world despite the
23 presence of a subsidy, that's how I get to my [REDACTED] number.

24 It's the sum of the [REDACTED] who called and complained and
25 got a subsidy and the roughly [REDACTED] who left despite the presence

1 of the subsidy. That's from my churn model. The sum of those two
2 give me the roughly [REDACTED] defecting subscribers in a world without
3 a subsidy.

4 And I think what you're asking me is it possible that
5 there would have been even more, and I guess no. I'm with you.
6 I'm saying that everyone who got a subsidy under this iteration,
7 everyone who got a subsidy would have defected in a world without
8 a subsidy. That's what I'm saying. All right?

9 And the basis for that is that Cablevision made the call
10 that in addition to you calling in complaining and us deciding that
11 you're deserving of a subsidy, we're sufficiently worried, maybe
12 it's not a 100 percent, but Cablevision is sufficiently worried
13 that if they don't do something for that customer, this is one of
14 the [REDACTED] who got the subsidy.

15 Cablevision is doing this, not everyone who called got
16 the subsidy, Your Honor, this is very important. There's
17 informational content and an economist can glean as to why certain
18 people got subsidies and others did not.

19 What I'm inferring from this is that the 7,700 were not
20 necessarily going to leave with a 100 percent probability in the
21 absence of a subsidy, but we're going to leave with a sufficiently
22 high probability that Cablevision felt it was necessary to repair
23 relations [REDACTED]

24 So, in one scenario, I'm going to assume that all [REDACTED]
25 of those would have left in the absence of a subsidy. Stated

1 differently, I'm just using Cablevision's own prediction model as
2 to who was sufficiently upset to warrant a subsidy.

3 JUDGE SIPPEL: Okay. And then, so [REDACTED] on your theory,
4 your approach, [REDACTED] stayed because they got a subsidy?

5 THE WITNESS: Correct.

6 JUDGE SIPPEL: Then how many complained but left?

7 THE WITNESS: This is what we know about the complainers,
8 Your Honor. What we know is that we started with [REDACTED]. We were
9 able to -- Cablevision's able to preserve [REDACTED] as a result of the
10 subsidy.

11 JUDGE SIPPEL: The subsidy?

12 THE WITNESS: Of those [REDACTED], the last data point that I
13 saw suggested about [REDACTED] were still -- [REDACTED]

14 [REDACTED]
15 To answer your question directly, my best estimate of how
16 many people left despite the presence of the subsidy is between
17 [REDACTED] and [REDACTED]. That is of the [REDACTED] phone calls, I would say
18 it's a very small fraction, somewhere between a [REDACTED] and [REDACTED]
19 ended up leaving in spite of the presence of a subsidy.

20 JUDGE SIPPEL: All right. Let me just try it this way.
21 You're assuming that [REDACTED] stayed because they got a subsidy?

22 THE WITNESS: I'm not assuming that, that's right in
23 the documents. We know that [REDACTED] did, in fact, get a subsidy.
24 Now, not all [REDACTED] of those were preserved because they slowly
25 trailed off after the subsidy expires. The first time we get a

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1 look on the database [REDACTED], we're
2 down to [REDACTED].

3 JUDGE SIPPEL: But on the other side of the coin, if they
4 had -- all [REDACTED], if they had not gotten the subsidy, you say they
5 would have churned?

6 THE WITNESS: My best estimation, I do several scenarios,
7 my best estimation is they would have churned in the absence of a
8 subsidy. Right? That's my best scenario.

9 But, the question is, is it needed to show profit
10 sacrifice? Is it needed to assume, does one need to assume that
11 all 100 percent of those would have left in the absence of a
12 subsidy? The answer is no.

13 What you would need to tip the calculus in favor of a
14 profit sacrifice is about 50 percent.

15 JUDGE SIPPEL: So, you're down to [REDACTED] thereabouts?

16 THE WITNESS: Correct. You only need about 50 percent of
17 those [REDACTED] in order to tip the calculus in favor of a profit
18 sacrifice. That's leaving in the absence of a subsidy, correct.

19 JUDGE SIPPEL: Okay.

20 THE WITNESS: Did I answer that question? I'm kind of
21 worried.

22 JUDGE SIPPEL: No, no, that's --

23 THE WITNESS: Okay.

24 JUDGE SIPPEL: Don't worry.

25 MR. COHEN: Dr. Singer, let me try to follow this up,

1 okay?

2 THE WITNESS: Sure.

3 BY MR. COHEN:

4 Q Because I still think we're not getting the full picture
5 here perhaps.

6 A Okay.

7 Q Let's just take the whole universe of complainers. There
8 were [REDACTED] people who complained, right, roughly?

9 A Correct.

10 Q And just rough numbers, let's just call it [REDACTED] who get
11 no subsidy, correct?

12 A That's fair.

13 Q [REDACTED] who get no subsidy, they're not infected
14 by this [REDACTED]

15 A Infected?

16 Q Meaning whatever happened to them, happened to them.
17 They're not affected, I should say, by the subsidy.

18 A I disagree. They're adversely affected. If you call --
19 when we call the manager over to the table --

20 Q I'm not asking for --

21 A -- you don't have to smash the table into pieces, there's
22 something wrong in the relationship that's been damaged.

23 Q Dr. Singer, we're going to be here all day, okay? We
24 really are going to be here all day. I'm really trying to ask you
25 some simple questions.

1 [REDACTED] -- forget goodwill, I'm going to come to
2 it, that's what the point you were going to make, right?

3 A Yes.

4 Q The restaurant, the lawyer who has to do the bill, forget
5 about goodwill.

6 A Okay.

7 Q What we do know is there were [REDACTED] complaining
8 customers who did not get a subsidy and not all [REDACTED] left,
9 correct?

10 A Absolutely, I agree with you. I only estimate between
11 [REDACTED] and [REDACTED] left.

12 Q So, of the [REDACTED] who got nothing, all right, [REDACTED]
13 [REDACTED] left, right?

14 A It's hard for me to say which of the -- from my best
15 estimates, my [REDACTED] to [REDACTED], where do they come from? But if you
16 use the base of [REDACTED], I think that's pretty fair.

17 Q Okay.

18 A So, yes, on the order of [REDACTED] --

19 Q Okay.

20 A -- ended up leaving despite the presence of a subsidy.

21 Q Now, you have [REDACTED] people who did get a subsidy, right?

22 A Correct.

23 Q And you're converting them into the same world as the
24 [REDACTED]?

25 A In the absence of a subsidy. Remember, I'm doing it two

1 ways, in one iteration, I'm doing it without a subsidy.

2 Q And, in the absence of a subsidy, you say that the lower
3 bound, which means the minimum, right, a reasonable lower bound, is
4 that economics for minimum?

5 A Can you take me to the page?

6 MR. COHEN: The top of page 53.

7 JUDGE SIPPEL: Of which --

8 MR. COHEN: I'm in his testimony now, Your Honor.

9 JUDGE SIPPEL: Which version?

10 MR. COHEN: The current version, page 53.

11 A reasonable lower bound, is that all [REDACTED] would have
12 left, right? Would have churned?

13 THE WITNESS: Well, the lower bound is that and the sum
14 of the next thing, right.

15 BY MR. COHEN:

16 Q Right, right. So, here's my logic problem.

17 A Okay.

18 Q [REDACTED] people got no subsidy and some number
19 between [REDACTED] and [REDACTED] left, right?

20 A Correct.

21 Q That's the first part. Now, you have a group of [REDACTED]
22 people who got the subsidy and you're asking the question what
23 would have happened with respect to those [REDACTED] if there was no
24 subsidy? You know the answer, do you not, because the [REDACTED] did
25 not get a subsidy and fewer than [REDACTED] of them left? So, how

1 could a 100 percent of this group leave?

2 A You don't know the answer. This is a different group.
3 This group proved to Cablevision by virtue of the sincerity or
4 something that they said on the call to cause them to get a
5 subsidy. This is a special group.

6 You're acting like the preferences of this group towards
7 GSN are the same as those who called and didn't warrant a subsidy,
8 right? These people are special and what we're trying to figure
9 out is if they were so persuasive to Cablevision as to get a
10 subsidy, what would have happened in a world where they called and
11 there's no subsidy to mitigate?

12 Q Okay, I understand your point. Let's deal with the
13 empirical facts. You reviewed the documents and testimony relating
14 to the subsidy program, yes or no?

15 A Yes.

16 Q Okay. So, you're opining about these conversations,
17 there are no documents that show anything about conversations
18 between Cablevision and its customers, right? You don't know what
19 anybody said in any conversations, do you?

20 A I think -- I don't, but I think it's fair for me to use
21 the word phone call. I think that Cablevision learned of the
22 customers' dissatisfaction via a phone call.

23 Q And, if fact, what happened is there were thousands of
24 phone calls on day one, right? Yes?

25 A Correct.

1 Q And thousands of phone calls on day two, correct? And
2 that, at some point in time, when those phone calls reached [REDACTED],
3 [REDACTED] or so, Cablevision said, for anybody who else who calls to
4 complain, we're going to give them a subsidy.

5 It was chronological decision, correct?

6 A So, that's not my understanding of the relationship.

7 Q That's not you -- what's that based on?

8 A I understand that Cablevision had discretion as to who
9 got a subsidy even after the subsidy program began.

10 Q But, in the first [REDACTED] calls, there was no discretion
11 and no matter how vociferously they complained and no matter how
12 loyal they were to GSN, there was no subsidy, correct?

13 A I'll grant you, before the subsidy program came into
14 being, but my understanding is that after the subsidy program came
15 to being, it wasn't automatic. It wasn't automatically the case
16 that you would get it.

17 Q Have you seen any data that tells us what percentage of
18 the complaining callers got it? What percentage of the complaining
19 callers didn't get it?

20 A I don't know if I have it that granular, no.

21 Q Have you seen any documents that reflect anything about
22 the decision making of Cablevision about how to exercise that
23 discretion about whether or not to award a subsidy?

24 A I think I have seen one document to that effect.

25 Q What's the document?

1 A I'm sitting here, I'm not going to be able to call it up.

2 Q All right.

3 A But I think that there is a document to that effect, yes.

4 Q Is it really your testimony that you think you have an
5 empirical basis for concluding that each of the [REDACTED] customers who
6 called to complain and received a subsidy were so vociferous that
7 they persuaded a customer service representative at Cablevision to
8 give them a subsidy for fear of losing them? Is that the
9 conclusion you're drawing?

10 A I think that whatever happened in the conversation, the
11 Cablevision customer service representative felt it was necessary,
12 yes.

13 Q And what you say, look at footnote 153 that starts with
14 to an economist on page 53.

15 A Okay.

16 Q All right? To an economist, it is relevant that some
17 [REDACTED] complaining customers were selected by Cablevision to receive
18 a subsidy while roughly [REDACTED] others were not. Let's just stop
19 there.

20 Would you agree with me that the reason why the [REDACTED] got
21 it and the [REDACTED] didn't get it is the [REDACTED] called after the point
22 in time in which the subsidy was authorized?

23 A No, that's not my understanding.

24 Q You think the subsidy was authorized on day one?

25 A No, I just think that there was discretion available to

1 the customer service representative after the program had been
2 initiated.

3 Q Okay. Let's try again. They disconnected on February 1,
4 correct? The calls began immediately.

5 A Sure.

6 Q Okay? On the next day, February 2, had the subsidy
7 program been in effect?

8 A I don't believe so.

9 Q Okay. So, for that day and for a number of days, no
10 matter who called, there was no discretion, vociferous, mild
11 complaints, whatever, correct?

12 A I'm going to agree with you. That, in fact, as I'm
13 thinking this through, by not allowing any of those customers to
14 defect, my model is actually even more conservative.

15 Q I'm asking about the assumptions in your model.

16 A Right.

17 Q Okay? And --

18 A But I'm only doing the guys who got the subsidy, the
19 [REDACTED].

20 Q Right. And the reason that you use all of them as you
21 say in footnote 153, Cablevision was apparently trying to infer the
22 likelihood of defection based on what the complainer said on the
23 call. If Cablevision thought the threat was sufficiently high, it
24 offered a subsidy to retain the customer, period, no citation, no
25 further evidence is cited.

1 What is the evidentiary basis for that sentence?

2 A My understanding is that there was discretion that was
3 offered.

4 Q What's that understanding based on?

5 A It was based on conversations that I've had with counsel.

6 Q With counsel?

7 A Yes.

8 Q Okay. So, you made a judgment based on what Cablevision
9 thought, based on the discussions with counsel for Game Show
10 Network, the Complainant in this proceeding, fair?

11 A As to the understanding of how the subsidy program
12 worked, yes, it was based in part on conversations I had with
13 counsel.

14 Q But it wasn't based on any documents. You don't cite any
15 evidence.

16 A No, I don't cite any evidence, but I seem to recall a
17 document that speaks to the discretion that a customer service
18 representative could use.

19 Q Right. But, what you don't see are any documents that
20 explain how that discretion was exercised.

21 A I think that's fair. But, the fact that there was
22 discretion is what matters.

23 Q Okay.

24 A Right?

25 MR. COHEN: I think we've got that point, let's move on.

1 JUDGE SIPPEL: There is one other theory that may be, I
2 don't know if you want to consider it, but maybe all [REDACTED]
3 customers who were subsidized were economists.

4 MR. COHEN: Judge, I'd say it's probably been a long time
5 you lived anywhere the near the Cablevision -- (laughter)

6 So, let's go to goodwill.

7 THE WITNESS: Sure.

8 BY MR. COHEN:

9 Q Okay? And you testified about this in connection -- in
10 response to Mr. Phillips' questions.

11 So, this next piece of the detriment side, all right, of
12 your profit sacrifice test is you asked the question as to what is
13 the harm, quantified, that Cablevision suffers as a result of all
14 these complaints, right?

15 A For those customers that did not get the subsidy.

16 Q Correct. Now, you did a version of a profit sacrifice
17 test in 2013. We've already been through it, right?

18 A Well, then I was responding to and refining an
19 affirmative case of your expert.

20 Q Right. But in 2013, you knew there were [REDACTED] people,
21 right, you knew there were [REDACTED] people who had called and not
22 been subsidized, correct?

23 A Correct.

24 Q And you must have known in 2013 that just like when the
25 restaurant manager comps you for a drink that there must have been

1 some loss of goodwill because it's not good for Cablevision when
2 people call and complain. You knew that in 2013, right?

3 A Correct.

4 Q And you assigned zero economic value to the loss of
5 goodwill in 2013 when you criticized Mr. Orszag's analysis,
6 correct?

7 A No, I would disagree with that characterization.

8 Q Did you quantify a goodwill loss in 2013?

9 A No.

10 Q The first time you quantified a goodwill loss was in your
11 2015 testimony, correct?

12 A Right, when I, for the first time, gave my own
13 affirmative analysis of the profit sacrifice.

14 Q Okay. Now, I think we've clarified that the account that
15 the goodwill that you're talking about, that's not an accounting
16 invention, right?

17 A Correct.

18 Q Okay. Now, what I didn't hear in response to Mr.
19 Phillips' questions is where in economic literature -- well, let me
20 start with this question.

21 A Okay.

22 Q Can you cite an economic literature that would support
23 your argument that the [REDACTED] loss of profit for each [REDACTED]
24 [REDACTED] [REDACTED] [REDACTED] is a reasonable proxy for the loss of
25 goodwill? Is there any economic citation, something I can look at

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1 and compare, you know, when it's some kind of objective measure of
2 loss of goodwill?

3 A The question suggests there's an objective measure of a
4 loss of goodwill. I think that, as an economist, I'm trying to do
5 the best I can given the data that's in the record. And I think
6 that the best data that's in the record is what Cablevision stood
7 ready to pay for a customer to maintain goodwill and relations.

8 Q Right. And you know, because you've been an expert
9 witness many, many times that one of the things that Courts have to
10 do in assessing expert testimony is decide if their methodology is
11 accepted or reliable. Right?

12 A Sure.

13 Q And is there anything that you point to in your testimony
14 that would allow us to conclude that the way you calculate goodwill
15 is a generally accepted way that economists calculate goodwill for
16 anything cited? Articles? Treatises? Prior testimony? Anything?

17 A I think I just explained my methodology and my bases, but
18 I don't cite to examples of how other economists have done this.

19 MR. COHEN: Now, would you turn to page 51 of your report
20 and testimony, sorry Ms. Kane, testimony and look at the top
21 sentence on the top of page 51.

22 JUDGE SIPPEL: Are you talking about the --

23 MR. COHEN: Today's testimony in the binder, the spiral
24 binder as opposed to the big book.

25 JUDGE SIPPEL: Well, I want thinking about today or last

1 year, actually two years ago.

2 MR. COHEN: Okay. I conclude that Cablevision's
3 downstream division likely incurred a small loss as a result of
4 tiering GSN, right?

5 THE WITNESS: Yes.

6 BY MR. COHEN:

7 Q Now, that's your conclusion and that's what leads to the
8 profit sacrifice test and the net profit sacrifice test, right?

9 A Correct.

10 Q Okay. And you say likely incurred because you know you
11 can't prove it in an ex post analysis, correct?

12 A I wouldn't put it exactly that way. It's that it's
13 difficult. We know what the parameters are but it's difficult to
14 get precise estimate of each one of these parameters. So, instead,
15 what I give you is a range of losses.

16 Q Right. Now, look at footnote 143, I think it's quite an
17 important footnote, Dr. Singer. You say, the point of the
18 exercise, and the exercise is the net profit test and the profit
19 sacrifice test, is that right?

20 A Correct.

21 Q The point of the exercise is not to develop a precise
22 estimate of the harm. Instead, the purpose is to eliminate an
23 alternative efficiency rationale that if Cablevision would have
24 acted the same way towards GSN without a similarly situated
25 network. Do you see that, sir?

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1 A Yes.

2 Q Is that another way of saying that you're not willing to
3 stand behind the numbers that you've put out in this testimony as
4 being precisely accurate?

5 A No, that's not another way of saying it.

6 Q Okay. So, the point -- so, the point of the exercise is
7 not to develop a precise estimate? You have developed a precise
8 estimate of the harm?

9 A I've done the best I can with parameterizing the
10 variables that I know are important and I've given you a range. I
11 think that something similar happens when you ask an economist to
12 opine on damages. They're not going to -- they're trying to
13 recreate a but for world that never happened and they're not going
14 to give you a precise point estimate, they usually show you a few
15 different iterations.

16 Q And you're not ruling out, are you, since this is not a
17 precise estimate, that the net profit sacrifice by Cablevision was
18 lower than the bottom end of your range are you?

19 A I feel fairly confident that I've used a range that's
20 sufficiently wide to encompass the plausible outcomes. But it's
21 very hard as an economist to say that I can rule out a lot of
22 things. And I just wanted to be careful and say that, of course,
23 if you expand the confidence interval sufficiently large, you might
24 include a very de minimis gain or zero. It's possible.

25 Q There's no confidence interval that you've calculated in

1 these calculations.

2 A There's not a statistical confidence interval, but what
3 I've done is something different which is I've come up with the
4 parameters that are necessary to get a loss and then I've allowed
5 those parameters to range over what I consider to be a reasonable
6 range. This is how economists do valuations.

7 JUDGE SIPPEL: This says profit sacrifice test. Is that
8 net profit?

9 THE WITNESS: The first one is profit sacrifice. We're
10 just going to look at GSN, the tiering decision of GSN. When we go
11 to the net profit sacrifice test, that's the second test, we're
12 going to look at the loss relative to the loss that would have been
13 or that was incurred by carrying their own affiliates broadly.

14 JUDGE SIPPEL: Thank you. I'm sorry.

15 MR. COHEN: Now, before we leave the profit sacrifice
16 test, just one other thing.

17 THE WITNESS: Sure.

18 BY MR. COHEN:

19 Q So, I just want to add up positives and negatives. On
20 the negative side, that's easier for me, instead of profit
21 sacrifice to the benefit, I'll just say on the negative side, there
22 is the [REDACTED] customers who your model predicts would have churned,
23 right?

24 A Yes.

25 Q And then there's a loss attributable to the other [REDACTED]

1 customers who you say would have churned had they not received the
2 subsidy, right?

3 A Correct.

4 Q And then there's the goodwill loss, right?

5 A Yes.

6 Q Are those all the negatives in your profit sacrifice
7 model?

8 A Yes.

9 Q Okay. Now, let's -- you have to benefit the -- balance
10 that --

11 A Yes.

12 Q -- against the benefits to Cablevision, right? And one
13 benefit to Cablevision is the [REDACTED] in license fees that they
14 were able to forego, correct?

15 A Correct.

16 Q And another benefit to Cablevision, which you ignore in
17 your analysis, is that Cablevision converted, actually converted
18 people to the sports tier, correct?

19 A No, I don't ignore that and that's not a correct
20 statement.

21 Q Okay. Where do you take that into account?

22 A I've estimated the value of that and it's zero, so it
23 doesn't need to come into the calculus.

24 Q It's --

25 A As I testified earlier, let me finish, please.

1 Q Yes.

2 A My best estimate is that in the presence of the subsidy,
3 I believe through my econometric model, that Cablevision induced
4 about [REDACTED] immediately because of the tiering episode.
5 But, that can almost be entirely explained [REDACTED]
6 [REDACTED]

7 So, again, I'm trying to model the world here in the
8 absence of the subsidy. So, my best estimate is that in the
9 absence of the subsidy, this benefit would be zero.

10 Q Is that another way of saying that it's your testimony
11 that in the absence of a subsidy, no one would have taken the tier?

12 A That's my best estimate, it'd be very few. I mean
13 technically, it's [REDACTED]. It's [REDACTED] minus [REDACTED].

14 But, even you're a devout GSN fanatic, all right, the
15 notion of paying an extra \$7.00 a month just to watch GSN, that
16 would imply that you're willingness to pay for GSN would exceed
17 \$7.00, assuming you don't value the other content that's on the
18 sports tier.

19 So, that's a big ask of someone, even if they're a
20 fanatic. I mean \$7.00 a month to follow one station is big and my
21 best estimate is they were only able to induce [REDACTED]. That can
22 almost be entirely explained by the number of subsidies.

23 Q All right. All I want to understand is that your best
24 estimate is that, notwithstanding this fiercely loyal group of
25 viewers that you talk about, if Cablevision hadn't [REDACTED]

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1 [REDACTED], right?

2 A I think that's fair. It doesn't -- you can be as loyal
3 as you want, but \$7.00 a month to follow any station with the
4 exception of something like ESPN or HBO is pretty hard to ask of a
5 cable customer.

6 Q Okay. Look at footnote 143 again where we just were and
7 I want to direct your attention at the last sentence.

8 You say, but it does not include, and that's the loss,
9 right, just to put it in context, that the "it" is the loss?

10 A Yes, the confidence interval, my best range of where the
11 losses are do not include a gain.

12 Q Okay. Right, do not include a material gain to the
13 downstream division. Cablevision would not --

14 A Hold on.

15 JUDGE SIPPEL: Where are you?

16 THE WITNESS: I'm sorry, he's lost.

17 MR. COHEN: Oh, footnote 143, thank you Dr. Singer. Page
18 51, it's just where we were before.

19 JUDGE SIPPEL: I've got it.

20 MR. COHEN: Now, I'm on the last sentence, Judge, instead
21 of the first sentence.

22 JUDGE SIPPEL: All right.

23 MR. COHEN: Cablevision would not rationally risk
24 antagonizing [REDACTED] GSN loyalists in exchange for an immaterial
25 gain or even a small loss unless it anticipated an offsetting gain

1 to its upstream division. Do you see that?

2 THE WITNESS: Yes.

3 BY MR. COHEN:

4 Q Now, this concept here of rational risk, that's not based
5 on anything empirical, is it?

6 A I think this whole thing is based on empiricism, right?
7 We observed a pretty dramatic response to the tiering and the
8 question is, is this painful for Cablevision?

9 Q But, what you're saying is the only rational reason they
10 would have done it is if they thought they thought they were going
11 to make money for their programming network, right?

12 A I think that's the most logical inference, yes, is that
13 you wouldn't take a risk, you wouldn't take the gamble unless there
14 was a reward.

15 Q And then you ruled out -- have you ruled out the
16 possibility that Cablevision simply underestimated the risk?

17 A Well, it's hard for an economist to rule out things.

18 It's conceivable that they overestimated. It's
19 conceivable they underestimated. But, my point that I made maybe
20 ten minutes ago was that even if they -- I'm just going to take
21 your hypothetical -- even if they had badly underestimated how much
22 pain this was going to generate, they didn't have to keep the
23 program in place. They could have reversed.

24 And I think it's very important that they decided, at
25 that point, not to. That tells me a lot. They're basically saying

1 that there's got to be some offset here. There's got to be some
2 offset and we're trying to figure out what's that offset.

3 Q By the way, the loss of goodwill that you calculated,
4 that's actually -- that's not dollars out of pocket to Cablevision
5 that is actually felt, right?

6 A It's my best estimate. At this point, it's an
7 intangible. I told you about what mitigation does is you're
8 converting the intangible loss into a tangible loss, right, you're
9 monetizing it, right?

10 And at this point, this is my best estimate of what the
11 intangible loss is. You're right, they had not -- for those
12 customers, they had not yet monetized it. But, knowing what they
13 would have been prepared to monetize it at tells me -- gives me a
14 reasonable approximation of what it's worth.

15 Q Okay. And now, I want to spend just one or two questions
16 on the net profit sacrifice test because I think the rationale is
17 pretty much the same.

18 You did a model that's based on the net profit sacrifice
19 test is where you try to estimate what the effect would have been
20 of retiering WE rather than GSN, correct?

21 A Correct, and I also do it for Wedding Central.

22 Q And for Wedding Central. Now, let's just stay with WE,
23 all right?

24 A Sure.

25 Q Okay. For WE, you know, don't you, that [REDACTED]

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1 [REDACTED]

2 A I've heard arguments to this effect, but I'm performing

3 the test as I understand it from the D.C. Circuit. And the D.C.

4 Circuit asked whether they would have suffered even greater losses

5 by -- or if they actually suffered greater losses by carrying their

6 own broadly.

7 So, I'm effectuating the test. I'm performing the test

8 and you're suggesting there might be a constraint that would get in

9 the way of actually performing it, we're doing an empirical

10 exercise and I don't think that I would do things any differently

11 knowing about that assumed constraint.

12 Q [REDACTED]

13 A [REDACTED]

14 Q Okay. [REDACTED]

15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

17 [REDACTED]

18 A [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

12 Q Is that an analysis that you performed?

13 A No.

14 Q On either side, correct? You didn't perform any analysis
15 with respect to violating the Cable Act and you didn't perform any
16 analysis about the impact of a breach of contract, correct?

17 A I think that's fair.

18 Q Now, on the WE side of the net profit sacrifice test,
19 you've assigned zero to the goodwill loss, correct? If we were --
20 if your testimony, let me be clear, is that if GSN, I'm sorry,
21 Cablevision had retiered WE rather than GSN, there would have been
22 no loss of goodwill because WE viewers are not as passionate as
23 GSN, fair?

24 A No, not fair.

25 Q What's the number that you assign to a goodwill loss when

1 you retier WE?

2 A I think that by the time that I had finished the churn
3 analysis, I had already come to a place and considered the other
4 components of the test. I had already come to a place that where
5 I concluded that the WE tv tiering would have been even -- would
6 have generated -- it would have been less painful for Cablevision.

7 And so, piling on goodwill losses, I'm just not --
8 sitting here right now, I'm not sure which direction it would cut.
9 But I think that I had already arrived at the -- I'd already
10 triggered the test.

11 Q Putting to one side whether it would be piling on or
12 which way it would cut, you did not calculate what the goodwill
13 loss would be for retiering WE, correct?

14 A I think that's fair.

15 Q And the churn analysis that you did in your model about
16 retiering WE, that analysis is based upon your churn analysis for
17 GSN, right?

18 A Correct.

19 Q And if your GSN churn analysis is not correct, then would
20 it follow -- I'm not asking you to accept that it's not correct --
21 that it would also follow that your WE churn analysis would also
22 not be correct?

23 A I think that's tautological. If the prediction model
24 that I estimated is faulty and I use it to make a prediction would
25 the prediction be unreliable? Yes.

1 Q Okay. I guess all I'm trying to say and maybe you've
2 already answered it, is the prediction model for churn for WE is
3 dependent upon the prediction model for GSN churn, correct?

4 A Correct.

5 MR. COHEN: Okay. I have one last, I think, line for you
6 if you'll indulge me without a break, I'll continue or I think that
7 might make the most sense.

8 MR. PHILLIPS: Sure, whatever the Judge wants.

9 MR. COHEN: And, Judge, witness, Court Reporter, I'm just
10 a few more minutes.

11 JUDGE SIPPEL: Keep going.

12 MR. COHEN: Okay. Now, let's talk about Table 8 on page
13 45, what you call your peer analysis. Do you see that, sir?

14 THE WITNESS: Yes.

15 MR. COHEN: Okay. And, you say that you present --

16 JUDGE SIPPEL: What page are you on?

17 THE WITNESS: I'm sorry, Your Honor.

18 MR. COHEN: Forty-five, Table 8, I think this is a table
19 that Dr. Singer testified about way back in the morning.

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: Going back to 45, okay. I was just
22 writing some notes here. Oh, I see, Table 8?

23 MR. COHEN: Yes. And I think you referred to this, I
24 don't see it in -- I don't see these words, well, I do see the word
25 peer. It's the peer data. You called it the peer analysis?

1 THE WITNESS: Sure.

2 BY MR. COHEN:

3 Q Right? And this is the way that other distributors carry
4 GSN and the inference that you draw is that Cablevision is
5 essentially an outlier right, from these numbers?

6 A And it's consistent with the hypothesis of profit
7 sacrifice, correct.

8 Q Okay. Now, and in response to some questions the Judge
9 asked you, you said that if you put it to one side, Comcast and
10 Time Warner, there are a number of cable operators here which are
11 not vertically integrated. So, one can assume that those
12 non-vertically integrated cable operators were not operating to
13 advantage of networks that they were affiliated with, correct?

14 A Correct. And just to be precise, I wanted to check if
15 they were non-vertically -- if they were vertically integrated into
16 women's programming.

17 So, it's conceivable, I don't think they are, but it's
18 conceivable that, you know, I said from DISH down, they're
19 non-vertically integrated.

20 Q Right.

21 A But, I meant non-vertically integrated into women's
22 programming, correct.

23 Q Now, you know, do you not, that there are cable
24 operators, not just mom and pops, but cable operators of size that
25 don't carry GSN, have never carried GSN or have carried GSN and

1 have dropped them all together, you know that, don't you?

2 A I'm sure that those that you mentioned are included in
3 the [REDACTED] percent from Kagan.

4 Q Right.

5 A So, yes.

6 Q Right. But there are two components to the [REDACTED] percent.
7 One component would be subscribers on systems that carry GSN but
8 where they're not fully penetrated, right?

9 A Yes.

10 Q Right? So, for example, some part of the subscribers who
11 don't take GSN would be among the [REDACTED] percent of DISH subscribers
12 who don't get it, right? Because DISH only carries it at a [REDACTED]
13 percent penetration level, right?

14 A Correct.

15 Q And then there are other MSOs, right, there are other
16 MSOs that just don't carry it at all, right?

17 A I can conceive that there are others, they're not in what
18 I consider to be the peer group, but there certainly could be some
19 others.

20 Q Why is Cablevision, it what, [REDACTED] subscribers?

21 A Correct.

22 Q And that's a peer of Comcast? How many subscribers does
23 Comcast have, 23 million?

24 A Correct.

25 Q And DIRECTV has 19 million? Eighteen million?

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1 A Correct.

2 Q And you think that those are peers with Cablevision?
3 They're seven times the size of Cablevision?

4 A Yes, I used above two million to be the threshold.

5 Q And what makes two million the peer group? Is there any
6 document, any objective evidence that two million is some magical
7 number for a peer group?

8 A I think that when you talk about Cablevision, you
9 typically talk about them in the same breath as the largest MSOs in
10 the country, yes.

11 Q Okay. Why don't you look at Exhibit GSN in the big book,
12 GSN 262? 232, I'm sorry, pardon me. I'm looking right at 232 and
13 calling it 262.

14 A I'm almost there, 2?

15 MR. COHEN: 3-2. Towards the back of the big book.

16 JUDGE SIPPEL: GSN?

17 MR. COHEN: GSN 232.

18 JUDGE SIPPEL: Got it.

19 MR. COHEN: Do you see that, sir?

20 THE WITNESS: Yes.

21 BY MR. COHEN:

22 Q Okay, and this is in evidence and it says Top Cable MSOs,
23 right?

24 A Okay.

25 Q Do you see that Cablevision is number five? Do you see

1 that?

2 A Yes.

3 Q And number six is Bright House, do you see that?

4 A Yes.

5 Q And then number seven is Sequel Communications, right,
6 doing business as Suddenlink Communications?

7 A Yes.

8 Q And are you aware, sir, that Suddenlink dropped GSN
9 entirely for a period of time from carriage? Anyone told you that?

10 A I know they were negatively positioned, but what I don't
11 know is what the penetration looked like as of June of 2011 around
12 the time the tiering was made.

13 Q All right. You're not asserting that Suddenlink carries
14 GSN on a tier higher than Cablevision, are you?

15 A Now what I can't tell from the table just because it's so
16 badly labeled, it says 12/12Q. I don't know what that means in
17 English.

18 Q It's GSN's exhibit.

19 A I know. I know. And so, what I -- to the extent that
20 you want to bring Suddenlink in as a peer, which I don't think
21 would change much, I'd want to know what its penetration rate looks
22 like around the time that I measured it.

23 Q Okay. What about Mediacom? Do you see it's number eight
24 right after Sequel/Suddenlink?

25 A Yes.

1 Q Don't you know that Mediacom does not carry GSN at all?
2 Do you not know that?

3 A No, I don't know that. And, are you getting that from
4 this table?

5 Q I'll make the representation to you.

6 A Okay.

7 Q I'm asking you if you know? I can't make a -- I'm asking
8 you do you know one way or the other whether Mediacom carries GSN?

9 A No.

10 Q Number nine, Wide Open West, do you know one way or the
11 other whether Wide Open West has carried by GSN?

12 A I didn't study the small MSOs, no.

13 Q Okay. Well, small MSOs, how many more subscribers does
14 Cablevision have than Mediacom?

15 A Three million.

16 Q Two million?

17 A Yes, this shows, as of 12/12Q, whatever that means, this
18 says 3.2 million minus 1 million, yes 2.2 million.

19 Q Right. So, one million is too small, but 21 million, 995
20 is not too big for constructing a peer group, is that fair?

21 A I don't think that people consider Wide Open West and
22 Mediacom to be in the same orbit in peer group as the large MSOs.

23 Q What people?

24 A Whenever you talk about top MSOs in the country, this is
25 a --

1 Q Well, according to Exhibit 232, Sequel which is
2 Suddenlink, Mediacom and Wide Open West are the seventh, eighth and
3 ninth largest cable operators in the country. Are they not?

4 A They might be, but they, first, they're behind DISH and
5 DIRECTV but they're, in terms of subscribers, they are much, much
6 smaller than the distributors that I have in my peer group.

7 Q So, is it fair to say that you did not look at the
8 carriage decisions with respect to GSN of any cable operator that
9 was smaller than Cablevision?

10 A No, that's not fair.

11 Q Which ones did you look at?

12 A Well, I remember that I provided the nationwide
13 penetration rate of ■ percent, that includes all distributors
14 including the smallest distributors.

15 Q And that's an aggregate number?

16 A Yes, but that contains everyone.

17 Q Right. So, my question, sir, is you broke out individual
18 cable systems in Table 8, correct?

19 A Correct.

20 Q Did you look at the penetration rates on any cable system
21 other than the ones that are listed on Table 8 for GSN?

22 A And on an individual level?

23 Q Yes.

24 A I did not.

25 Q And you do know, do you not, that the Mediacoms and the

1 Suddenlinks and the Wide Open Wests of the world, they're not
2 vertically integrated, right?

3 A They tend not to be, right.

4 Q So, if a vertically integrated cable operator such as
5 Mediacom decides not to carry GSN, it can't be because they're
6 protecting an affiliated network, right, an affiliated women's
7 network, they don't own any, correct?

8 A I think you meant to say a non-vertically integrated.

9 Q A non-vertically -- let me rephrase the question. Thank
10 you, sir.

11 Is it true that if a non-vertically integrated cable
12 operator such as Mediacom chooses not to carry GSN at all, the
13 reason cannot have anything to do with affiliation because they're
14 non-integrated?

15 A That's -- I think that's generally fair, yes.

16 JUDGE SIPPEL: Much more?

17 MR. COHEN: No, Your Honor, not a lot more.

18 One other question, sir. Now, one of the things that you
19 draw from Table -- a couple of other questions, the last line.

20 A couple of things that you draw from Table 8 is the
21 issue -- is that Table 8 allows you to conclude that it may not
22 have been an efficient decision for Cablevision to treat GSN
23 differently than what Cablevision's peers -- the way Cablevision's
24 peers treat it, right?

25 THE WITNESS: Correct.

1 BY MR. COHEN:

2 Q And what you say, the import of your net profit sacrifice
3 test is that, if Cablevision was a rational economic actor, it
4 would have tiered WE instead of GSN because it would have been
5 cheaper, right?

6 A Yes.

7 Q Okay. Now, WE is broadly carried by every single cable
8 operator on Table 8, just the GSN is, right?

9 A I haven't studied the exact penetration rates of WE for
10 these particular operators, but I'll make that assumption if you
11 want me to.

12 Q Well, you know WE is a fully distributed cable operator,
13 with at least as many subs as GSN, right?

14 A Right.

15 Q So, the conclusion under your hypothetical world that
16 Cablevision should have reached after doing your net profit
17 sacrifice test is rather than carry GSN differently than its peers,
18 it simply should have carried WE differently than its peers, Right?

19 A That isn't how I characterized my opinion. My opinion is
20 that I don't accept Cablevision's rationale that the reason why it
21 tiered GSN was to save money. If that was their sincere rationale,
22 they would have saved even more money by tiering their own.

23 Q I'm making a very narrow point. You want the Judge to
24 draw some inferences from peer carriage, correct?

25 A Correct.

1 Q WE is a broadly distributed network, correct?

2 A I believe so, yes.

3 Q Okay. And, therefore, if Cablevision had decided to
4 retier WE rather than GSN, it would have been acting differently
5 than all of these cable operators who are not affiliated with WE,
6 right?

7 A Correct. I'm not saying that that's the profit
8 maximizing thing to do, I'm saying on a relative basis, you'd save
9 more money by doing that than by tiering GSN.

10 Q Okay. Thank you very much for your patience, Dr. Singer.

11 A Sure.

12 JUDGE SIPPEL: Mr. Phillips?

13 MR. PHILLIPS: Your Honor, I can start or --

14 JUDGE SIPPEL: Do you want to take a break?

15 MR. PHILLIPS: I would -- it'd be kind of nice, I've had
16 a little --

17 JUDGE SIPPEL: Fifteen minutes?

18 MR. PHILLIPS: I don't even need that long, I'd just like
19 a minute or two.

20 JUDGE SIPPEL: Fifteen minutes.

21 MR. PHILLIPS: Okay.

22 (Whereupon, the above-entitled matter went off the record
23 at 4:14 p.m. and resumed at 4:30 p.m.)

24 JUDGE SIPPEL: We're back on the record.

25 Mr. Phillips?

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1 MR. PHILLIPS: Thank you, Your Honor. I'm going to
2 apologize; I'm going to go as quickly as I can. I'm going to be
3 mainly limited by the fact that the older I get, the less I can
4 read my own handwriting. So if you'll bear with me while I try to
5 figure out what I had down here, but the --

6 JUDGE SIPPEL: If you're reading from some kind of --

7 MR. PHILLIPS: No. I'm reading -- this is my -- my
8 little black book, Your Honor, that I --

9 JUDGE SIPPEL: A manuscript.

10 MR. PHILLIPS: It's the same thing I've been having all
11 the years I've been up here.

12 JUDGE SIPPEL: Why don't I have one of those? Go ahead.

13 REDIRECT EXAMINATION

14 BY MR. PHILLIPS:

15 Q Let me go start with one of the things you just left off
16 with, which is Table 8 on page 45. You probably have it open.

17 A Table 8?

18 Q Yes.

19 A Oh, yeah. Right in front of me.

20 Q Table 8 and page 45.

21 A I've got it right in front of me.

22 Q So, Dr. Singer, just to be clear, how did you choose the
23 tiers that are in this table?

24 A Well, I used a two million subscriber cutoff as of June
25 2011.

1 Q Was there anyone that was above two million as of June
2 2011 that you omitted from this?

3 A No.

4 Q So you didn't cherrypick these.

5 A No.

6 Q Okay. Mr. Cohen asked you about Suddenlink. Were you
7 aware that Suddenlink -- that Mr. Goldhill had testified that
8 Suddenlink had been dropped -- had dropped GSN only for a very
9 brief period?

10 A I'm not sure I was aware of that.

11 Q Okay. Would that affect your analysis if you knew that
12 when they dropped it, it was only for a brief period?

13 A It suggests that it wouldn't have had as big of an effect
14 as what was intimated during the questioning.

15 Q Well, there was a -- let me -- thank you. I want to move
16 to another subject. Mr. Cohen asked you, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
19 A I remember the question, yes.

20 Q And the suggestion by Mr. Cohen, if I may, was that we
21 couldn't get tiered -- [REDACTED]

[REDACTED] Do you remember that,
23 sir?

24 A Yes.

25 Q Okay. Now, who is WE owned by, sir?

1 A WE is owned by Cablevision.

2 Q And, well, it's owned -- it's an affiliate of
3 Cablevision, right?

4 A Correct.

5 Q They're owned by the same people, right, sir?

6 A Correct. Correct.

7 Q [REDACTED]

■

■

■

11 Q I'd like to read you from the deposition of Mr. James
12 Dolan. Do you know who Mr. James Dolan is?

13 A Yes.

14 Q Okay. I'm more than happy -- in fact, why don't we --

15 MR. COHEN: Your Honor, if I -- I'm just going to object.
16 They're going to ask -- he's going to read from Mr. Dolan's
17 deposition, and I'm going to ask, is the contents of the question
18 based on Mr. Dolan's --

19 JUDGE SIPPEL: What is the purpose of this?

20 MR. PHILLIPS: The purpose is that Mr. Dolan says that,
21 in fact, the affiliation agreement with WE was completely
22 renegotiated in early 2011 before they spun it off. Why did they
23 do it? [REDACTED]

■

■

8 JUDGE SIPPEL: Well, you're telling me it doesn't.

10 JUDGE SIPPEL: Did you know about that testimony?

12 BY MR. PHILLIPS:

14 A I don't think so.

[illegible]

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
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25 JUDGE SIPP: Well, let me ask you this. You know, I'm

1 sure that in all your musings and testimonies and all of the things
2 that you've done in your career, you must have some idea about
3 corporate structure. And doesn't WE tv have some kind of a
4 corporate structure?

5 THE WITNESS: Sure.

6 JUDGE SIPPEL: Okay. How do you think they're going to
7 vote? I mean, the Board of Directors would be asked, "Would it be
8 okay, by the way, if we moved WE tv up to this tier? And here's
9 the reasons -- A, B, C." Anybody disagree with that? Do you think
10 somebody is going to raise their hand and say, "I don't think
11 that's a good idea"? Do you understand me?

12 THE WITNESS: Yes. I think that it would be a difficult
13 decision given the internal conflicts. But I'm not -- I'm not
14 offering opinion that they would have or should have done it; I'm
15 trying to implement the D.C. Circuit test of the net profit
16 sacrifice as best I can. I'm simply trying to show that they would
17 have hypothetically saved even more money by tiering their own
18 relative to GSN, which triggers the net profit sacrifice test.

19 JUDGE SIPPEL: Well, I think we know that it's -- for
20 most business decisions, it's a wash. I mean, the decision of --
21 the big business decision is going to be made by the head of the
22 family. It's not going to be made by WE tv. I mean, that's the
23 way I'm taking it. Now, if you show me something in the evidence
24 that the temperature strikes me differently, I'll consider that.
25 But I think it's just a question of basic reality of life. Does

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1 that make your point?

2 MR. PHILLIPS: I think so, Your Honor.

3 JUDGE SIPPEL: Next one.

4 MR. PHILLIPS: I'm happy to keep going.

5 BY MR. PHILLIPS:

6 Q All right. Dr. Singer, you -- Mr. Cohen asked you --
7 well, what if -- when we were talking about how in your analysis it
8 was likely that they suffered a profit sacrifice by tiering GSN,
9 and Mr. Cohen asked you, "Well, what if they just made a mistake?"
10 Do you remember that testimony?

11 A Sure.

12 Q Do you remember those questions?

13 A Sure.

14 Q And you said something which I wanted to follow up on,
15 which is: you said they could have reversed. I wanted to find out
16 a little bit more -- if you could elucidate what you mean by, "They
17 could have reversed."

18 A I think that if you make a mistake, and real corporations
19 do this all the time, they -- there is opportunities to backtrack
20 and basically walk it back. I think that if they wanted to make
21 things whole, or make things right by those customers, they could
22 have just said, "You know what? We just didn't -- we didn't
23 realize what was -- how much pain this was going to cause. We'll
24 just go back to the status quo."

25 Q So even if they hadn't realized they were going to get

1 [REDACTED] phone calls immediately after the tiering, they could have
2 walked it back. Is that what you're saying?

3 A Correct.

4 Q Now --

5 JUDGE SIPPEL: In the scheme of things, there are not too
6 many apex people who do that, you know. It's very rarely that they
7 go back and say, "I was wrong."

8 MR. PHILLIPS: Some of the most talented ones do, though,
9 Your Honor.

10 JUDGE SIPPEL: Well, they say -- they say, "Mistakes were
11 made."

12 (Laughter.)

13 And then somebody gets fired. I'm sorry.

14 BY MR. PHILLIPS:

15 Q Dr. Singer, Mr. Cohen also pressed you on the question of
16 the [REDACTED] subsidies and your conclusion, your lower boundary that
17 all [REDACTED] subsidies would have departed, to reach the conclusion
18 that Cablevision reached a profit sacrifice. Do you recall that --

19 A Yes.

20 Q -- that question? Now, and you said something, and I
21 just wanted to follow up on it, that it -- that all [REDACTED] wasn't
22 critical to your conclusion that they reached a profit sacrifice.
23 Do I have it right, sir?

24 A Correct.

25 Q Okay. And, indeed, what if out of the [REDACTED], only [REDACTED]

1 left, sir?

2 A In a world without -- in a world without a subsidy, I
3 assume you're asking --

4 Q Yes.

5 A -- if we assume the more -- more realistic margin loss of
6 [REDACTED], you'd still have a profit sacrifice.

7 Q Well, what if only [REDACTED] had left?

8 A Same answer.

9 Q And what if only [REDACTED] had left?

10 A Same answer. You basically can come all the way down to
11 about 50 percent.

12 Q Okay. So you don't need to have all [REDACTED] to have left
13 with the more realistic margin analysis in order to arrive at the
14 conclusion that Cablevision likely had a profit sacrifice by
15 tiering GSN, correct, sir?

16 A Correct.

17 Q All right. Thank you.

18 Mr. Cohen also quizzed you a lot about the [REDACTED]
19 statistical significance level. And if I say that enough times, I
20 promise you I will get it wrong. Are you -- do you remember that?

21 A I do.

22 Q And that was with respect to your churning analysis.

23 A That's correct.

24 Q Okay. And he challenged you by saying: is there any
25 other data point that you use in your analysis that goes as high as

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1 an 11 percent statistical significance level? Do you recall that?

2 A Yes.

3 Q Sir, are you aware of any other respected economists who
4 have used a statistical significance level of 11 percent or
5 greater?

6 A Sure.

7 Q Could you describe them for me?

8 A Sure. In fact, I -- I lay this out in a footnote where
9 one of the -- one of those popular treatises on econometrics used
10 in graduate schools uses an example that goes up to a 15 percent
11 significance level.

12 But the issue of what's the right significance level,
13 we're not the first litigants who have encountered this problem.
14 It has been -- it has been debated ad nauseum. And I try to
15 summarize what I understand to be the current thinking from an
16 economic sense about the best way to offer testimony in a
17 proceeding such as this.

18 Q Thank you, sir. Hold on one second here. I just -- I
19 want to look at something.

20 Now, sir, I'm going to talk about the ex ante versus ex
21 post analysis that Mr. Cohen also asked you about. And he took you
22 through your report that you did before the D.C. Circuit opinion
23 came out. Did you revise that analysis after the D.C. Circuit
24 opinion came out?

25 A I -- I offered my own affirmative analysis of profit

1 sacrifice based on my understanding of what the D.C. Circuit
2 decision said. But I also brought back my original analysis, which
3 was rebuttal to what Mr. Orszag did.

4 Q All right. And did you look at ex post data when you did
5 that after the D.C. Circuit?

6 A Yes.

7 Q Why?

8 A I felt that that was the best way to inform the test, as
9 articulated by the D.C. Circuit.

10 Q Thank you.

11 JUDGE SIPPEL: Do you think the D.C. Circuit got it
12 right?

13 (Laughter.)

14 MR. PHILLIPS: Objection, Your Honor.

15 JUDGE SIPPEL: I mean, why would you -- you would only
16 follow it. Well, then what? Forget I asked that. Let's go on.
17 Thanks.

18 MR. PHILLIPS: Your Honor, I'm sorry. As I said, bear
19 with me.

20 JUDGE SIPPEL: Well, I'll tell you what you're in for if
21 you don't move this along.

22 MR. PHILLIPS: I'm going. I'm going. I've just got to
23 --

24 JUDGE SIPPEL: I've got some more loaded ones.

25 (Laughter.)

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1 BY MR. PHILLIPS:

2 Q Okay. This is one I'm going to try to get right. And
3 the reason I'm going back to it is I know that I didn't understand
4 it that well, so I want to go back, get the pain of making it even
5 worse.

6 If we took all -- I want to go back to the lift analysis
7 that you did, and we talked about the lift analysis; the Judge
8 asked you a bunch of questions about it. And if we take -- and you
9 said that there was a -- as I understood your testimony, you said
10 there was a nine -- the tiering of GSN resulted in a █ percent to
11 █ percent lift at a statistically significant confidence level.
12 Correct?

13 A Yeah. Correct, sir. Lift in WE tv's share, viewing
14 shares. Correct.

15 Q That's what I want to focus on for a second here.

16 A Okay.

17 Q I want to try to understand what WE tv -- what the lift
18 is in. So if you take all of the Cablevision audience out there,
19 that's how many people, sir?

20 A Three, three-plus million.

21 Q Three-plus million people. Okay. And WE tv has some
22 portion of that -- of that -- all that audience out there. And all
23 of the minutes that people within that audience watched TV, period,
24 that's the universe, correct, sir?

25 A That's a small portion, on the order of █ percent.

1 Q All right. So WE tv has a share of that three-plus
2 million people and all of the minutes that all of those people
3 watch TV, correct, sir?

4 A Correct.

5 Q And so if you take the WE tv share, it goes up as much as
6 [REDACTED] percent, correct, sir?

7 A The percentage of the market -- the percentage of viewing
8 goes up by between [REDACTED] percent.

9 Q And you use percentage of viewing because that is
10 actually closer to the metric that would be used to monetize this,
11 correct, sir?

12 A I am actually doing it because it's a refinement to a
13 model that Mr. Orszag put in. I left his dependent variable -- the
14 variable of inquiry -- alone, which is the share of WE tv -- WE tv
15 viewing share. And I wanted to see what would happen if you
16 correct, among other things, this endogenated problem.

17 Q Now, if one network can take from another network viewers
18 that would raise its share of the total by [REDACTED] percent, would that be
19 significant to you, sir?

20 A Yeah. I testified that -- that certainly [REDACTED] percent I
21 feel comfortable saying is economically significant. [REDACTED] percent is
22 -- is modest. But I think between a two and nine percent lift in
23 the share of viewing is a meaningful lift.

24 Q Thank you, sir; I think I've got it better now.

25 So Mr. Cohen asked you before lunch about Exhibit 715;

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1 it's the SNL Kagan Economics of Basic Cable Networks.

2 JUDGE SIPPEL: Which exhibit, sir?

3 MR. PHILLIPS: 715.

4 JUDGE SIPPEL: Oh, okay. Thank you, sir.

5 BY MR. PHILLIPS:

6 Q And I believe that Mr. Cohen pointed out that the -- in
7 the 2010 WE tv average CPMs by network was [REDACTED] and [REDACTED] in 2011.
8 Do you recall that, sir?

9 A Yes.

10 Q And then he pointed to the last page of the document,
11 where it says for GSN it's [REDACTED] and [REDACTED], which you represented to
12 be four times -- the math is what it is; I don't think it's right.
13 Do you remember all that, sir?

14 A I do remember.

15 Q So I'd like to, if I might, show you a document that is
16 already -- I understand from my colleagues is already in evidence,
17 if I may show it.

18 MR. PHILLIPS: Your Honor, may I approach?

19 JUDGE SIPPEL: Certainly.

20 THE WITNESS: Thank you.

21 BY MR. PHILLIPS:

22 Q So I've placed before you, Dr. Singer, GSN Exhibit 65,
23 which --

24 MR. COHEN: You circled the one you want.

25 MR. PHILLIPS: Oh, I'm sorry.

1 BY MR. PHILLIPS:

2 Q And this is a GSN document, sir, that is dated July 21,
3 2010. And if you'd turn to the section on the third page of the
4 document, but it's the page numbered two, the box score --

5 A Third page of the document.

6 Q Which is -- it's numbered two; it says box score.

7 A Oh, oh. Sorry. This document. Yes, I've got box score.

8 JUDGE SIPPEL: It's on page --

9 THE WITNESS: I've got it.

10 JUDGE SIPPEL: Page Number 2, right?

11 BY MR. PHILLIPS:

12 Q And do you see where it says -- the column that says 10
13 to 11 up front?

14 A Yes.

15 Q And it says CPM, [REDACTED]. Do you see that, sir?

16 A Yes.

17 Q So that's GSN's own estimate of its CPM. SNL Kagan is a
18 -- just is a best estimate, correct, sir? They don't know, do
19 they?

20 A I think they are trying to take averages based on the
21 best information they can obtain.

22 Q And this is in its -- their [REDACTED] is significantly less
23 than the [REDACTED], wouldn't you say?

24 A It's very different. Yes.

25 Q You can put that one aside, sir.

1 A Okay.

2 Q Now, I want to go back to something that Mr. Cohen had
3 you look at. We spent a lot of time on this, and I'm not going to
4 spend anywhere near as much. We were talking about the Nielsen
5 data, with both duplication -- primary duplication and secondary
6 duplication. Do you recall that?

7 A Yes.

8 Q And in your analysis, sir, you set forth the both
9 duplication analysis, correct, sir?

10 A Correct.

11 Q Let me, if I can, I -- you know what? I'll look -- do
12 you recall where this is in your report? I'm sure I can find it.

13 A It was --

14 Q On page 21 and 23, it's Tables 3 and 4.

15 A Yes.

16 JUDGE SIPPEL: This is your testimony?

17 THE WITNESS: Yes.

18 BY MR. PHILLIPS:

19 Q Now, why is it, sir, that -- what is the both
20 duplication? Let me back up for a second. What does primary
21 duplication show you from Nielsen?

22 A It's conditioned on watching the network in question,
23 what's the likelihood of going to the reference network or the
24 other network.

25 Q And what does secondary duplication show you?

1 A Just going the opposite direction, which is conditioned
2 on watching the other network, what's the probability or likelihood
3 of watching the network in question.

4 Q And Table 3 and Table 4 here, you didn't do any analysis.
5 This isn't the result of your analysis, correct, sir?

6 A Correct.

7 Q This is just a reprint of stuff you've gotten from
8 Nielsen, correct, sir?

9 A Well, I have ranked it, but, yes, that's all I've done.

10 Q Okay. And under your analysis, and from the perspective
11 of GSN, where does WE rank?

12 A Very high, on the both duplication, yes.

13 Q Number 1 or number 2, correct?

14 A Correct.

15 Q So, sir, why did you use both duplication instead of
16 primary or secondary?

17 A Sure. So I explain this in the text, but I'll try to do
18 it very quickly here. What I found in using the primary and the
19 secondary is that, again, we're looking for overlap in viewing, but
20 we have to be sensitive of the fact that when you're comparing
21 against very popular networks or very unpopular networks, you could
22 draw the wrong inference.

23 So, for example, when you use a primary duplication,
24 where do people go when they -- when they turn off GSN? Well,
25 they're most likely, before you know anything about them, to go to

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1 the popular networks. That's just on average what people do.
2 That's why they're popular.

3 So when you -- when you use a primary duplication metric,
4 what you find is your network looking a lot like -- and that's the
5 inference, these are super popular networks, and you know that that
6 is not really what we are trying to do. We're trying to figure out
7 which networks are closest in product space from the perspective of
8 viewers, at least this passthrough.

9 And so I studied primary, and I studied secondary.
10 Secondary has the opposite bias working in that really small
11 networks get risen to the -- to the top. And so what I thought was
12 the most stable and least susceptible to these small or large firm
13 biases was to use the both. The both definition, again, is
14 conditional on watching either the network in question or some
15 reference network. What's the probability that you've watched both
16 within a certain period of time?

17 Q And let me follow that up, Dr. Singer. You also use this
18 from the perspective of GSN rather than from the perspective of WE.
19 But wouldn't you want to know this from the perspective of WE
20 instead?

21 A No.

22 Q Why not?

23 A Because WE wasn't taken away from -- from folks. What we
24 are taking away is GSN. That's what the tiering episode was about.
25 And we want to trace where people are most likely to go when GSN is

1 taken away from them.

2 Q So that's the reason you used the perspective of GSN.

3 A Correct.

4 Q So, sir, you can put that aside. I want to go to GSN --
5 was it 163? What's the big pitch book? 214. Okay.

6 Now, Mr. Cohen also asked you, when you were talking
7 about the perspective of people who sell rights, and he showed you
8 GSN 1 --

9 MR. COHEN: Cablevision.

10 BY MR. PHILLIPS:

11 Q Cablevision -- I'm sorry -- 214, which is in your big
12 book.

13 A Okay.

14 Q It's this really fat document here.

15 A Yes.

16 Q And I think you represented, and we can look at this, but
17 this is several years' worth of logbooks, correct, sir?

18 A Yes. I don't know if they are sorted chronologically,
19 but the first ones that I see are from 2008. And they run -- now
20 I'm going to the back assuming, again, they're sorted
21 chronologically.

22 Well, actually, now it goes back to 2008 again. So I'm
23 not sure that these are sorted. It's hard for me to speak to the
24 time, the relevant time horizon of this -- of these documents.

25 Q I think Mr. Cohen -- and he can correct me if I was wrong

1 -- represented that there were several years' worth of pitch books,
2 and he said that you had --

3 MR. COHEN: I'll just -- they certainly cover at least
4 '08 and '09. So it's at least two years in here. I can't sort it
5 any better than Dr. Singer.

6 BY MR. PHILLIPS:

7 Q Do you recall, Dr. Singer, what the period -- this was in
8 connection with your testimony in your -- in paragraph 63 of your
9 written testimony, where you talk about six shows that were pitched
10 to both GSN and WE tv. Do you know over what period of time you
11 examined those pitch books?

12 A I -- my recollection is that I did it around the time of
13 the tiering episode.

14 Q Do you know over what spread of time they represent?

15 A I don't know with precision, but my best understanding
16 sitting here is within the year, but I don't -- I don't have that
17 precisely in my mind.

18 Q So I've got a couple of sets of Exhibits 159 and 162,
19 which are what are referred to in the exhibits that you looked at.
20 This is -- these are the footnotes to that paragraph.

21 A Can you tell me the paragraph again?

22 Q 63.

23 A Okay.

24 MR. PHILLIPS: If I may approach, Your Honor, I'm going
25 to show you GSN 159, 160, 161, and 162.

1 MR. COHEN: I'm sorry. I missed the paragraph number
2 that you said, Mr. Phillips.

3 MR. PHILLIPS: 63.

4 MR. COHEN: Thank you.

5 MR. PHILLIPS: And I'm going to put the same before the
6 witness. And do you have another set? I apologize, Mr. Cohen.

7 MR. COHEN: I actually have them.

8 MR. PHILLIPS: Okay.

9 MR. COHEN: 159 -- I have them.

10 MR. PHILLIPS: Okay.

11 JUDGE SIPPEL: Page 63 or paragraph 63?

12 MR. PHILLIPS: Paragraph 63, which is on page --

13 JUDGE SIPPEL: I have it. Certain shows were pitched.

14 BY MR. PHILLIPS:

15 Q Yes. And Mr. Cohen had shown you this thick document of
16 all these pitches, which cover a multi-year period, although we
17 don't know how many years. And I put the -- in the documents that
18 you cite in your testimony, Dr. Singer. Can you tell me, from
19 looking at these, what is the period of time over which you found
20 these instances?

21 A So the first -- the first document is Exhibit 159. It
22 looks like it's in the end of 2011, November 2011. Then, I see in
23 the next document the beginning of 2012. That's Exhibit 160.

24 Exhibit 161 is the beginning of '12 as well, and that's
25 it. So it looks like the span of dates for which I found

1 overlapping pitches ranges from November -- this is going to be
2 heard to read, but November, December, and then three -- three
3 months or let's call it -- let's call it five months total looks
4 like the window.

5 Q Thank you, sir. Now, a further question on this: do you
6 know whether or not -- do you know whether or not when a producer
7 pitched a program to both WE and GSN, or either of them, that they
8 would use the same names for the programming to each of the
9 networks?

10 A No, I don't know that.

11 Q So, and if they used different names, you wouldn't have
12 found that, would you, sir?

13 A Correct.

14 Q And do you know whether there was any screening procedure
15 that went on before things made it to the pitch log?

16 A No, I don't.

17 Q So you don't know whether or not any unsolicited pitches
18 would have necessarily made it in the pitch log or not.

19 A I do not.

20 MR. PHILLIPS: Your Honor, if I may have just a minute or
21 two to confer with my partner, who I know wants me to ask a
22 question or two, but he's got to explain it to me first.

23 JUDGE SIPPEL: Well, that's the risk with partnerships.

24 MR. PHILLIPS: I know.

25 MR. COHEN: Any demographic, Your Honor.

1 JUDGE SIPPEL: Correct. Correct. Correct.

2 BY MR. PHILLIPS:

3 Q Dr. Singer?

4 A Yes.

5 Q Dr. Singer, I think this is -- I think this is my last
6 set of questions.

7 A Okay.

8 Q My second-to-the-last set of questions.

9 A Okay.

10 Q I'd like to turn you to Table 7 of page 42 of your
11 testimony.

12 A Okay.

13 Q And in this you cited that GSN had an average price per
14 month of ■ cents. Do you see that?

15 A Yes.

16 Q And then -- and WE tv of ■ cents a month. And if I
17 follow the footnotes correctly --

18 JUDGE SIPPEL: Give me the page you're on.

19 THE WITNESS: 42, Table 7.

20 JUDGE SIPPEL: Thank you.

21 MR. COHEN: I'm not sure if Mr. Feldman should be here
22 for a discussion of these license fees, but perhaps --

23 MR. PHILLIPS: Yes. I'm sorry.

24 MR. COHEN: And I'm sure he didn't hear what he just
25 heard, so maybe we can close the courtroom for just a minute.

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1 MR. PHILLIPS: And just step out. This won't take long
2 Mark. It's going to take as long as it is for Paul to tell me
3 about it.

4 (Whereupon, at 5:03 p.m. the OPEN SESSION was recessed,
5 to convene immediately in CLOSED SESSION.)

6 BY MR. PHILLIPS:

7 Q There's a number of WE tv here. Do you -- can you tell
8 me that -- where you got the average price per month in the
9 second-to-the-left-hand column there?

10 A Yes. It's the very first item listed in the source, if
11 you go through program costs per package, and then you have a Bates
12 Number CV034069. Looks like it could be a Cablevision document.

13 Q Okay. So you got that number from the Cablevision
14 documents, correct, sir?

15 A Correct.

16 Q Now, Mr. Cohen showed you Exhibit 162, you may recall.

17 A Yes.

18 Q And, in that, if you'd turn to page 25 of 28.

19 A All right. It's -- he wants us to turn to 25 of 28.

20 Q Right. And in this one --

21 A Oh. This Tab is 160 -- 162, I believe.

22 Q Okay.

23 A CV-162.

24 Q So, now, in your table you just testified that your
25 reference in this was an actual Cablevision document.

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1 A The numerator comes from a Cablevision document, yes.

2 Q Right. And in 162, which is a GSN document, which has WE
3 tv at a much higher --

4 JUDGE SIPPEL: What page are you on, Mr. Phillips?

5 MR. PHILLIPS: On 162, on page 25 of 28.

6 JUDGE SIPPEL: Okay. Give me just a second. Yes. Okay.
7 Go ahead.

8 BY MR. PHILLIPS:

9 Q Which has WE tv at a lower price per rating point.

10 A That's correct. It shows up at [REDACTED] as compared to
11 GSN at [REDACTED].

12 Q Right. And what is -- do you know what the source --
13 where GSN got this information?

14 A Well, I'm looking in the footnotes, and it looks like
15 Nielsen informed most likely the denominator. That would be the
16 viewing shares, the ratings points. And the numerator looks like
17 it came from Kagan, who would provide the license fees. That's how
18 I read the source at the bottom there.

19 Q And Kagan, as we talked about before, is just an
20 estimate, correct, sir?

21 A It's an estimate based on industry averages and what
22 Kagan contained, yes.

23 Q It's your understanding that Kagan knows the license fees
24 of WE tv?

25 A It certainly tries to know the license fees.

1 MR. PHILLIPS: So let me ask -- this is not to be
2 introduced -- let me ask the Court if I may approach and hand out
3 --

4 JUDGE SIPPEL: Yes, that's fine.

5 MR. PHILLIPS: -- GSN Exhibit 330.

6 JUDGE SIPPEL: Okay. That's fine.

7 (Whereupon, the above-referred to document was marked as
8 GSN Exhibit No. 330 for identification.)

9 JUDGE SIPPEL: So this is not in evidence, or this is --

10 MR. PHILLIPS: This is not in evidence.

11 MR. COHEN: It's a different page.

12 MR. SCHMIDT: It's a different slice of that cable
13 document that I think Your Honor was looking at.

14 JUDGE SIPPEL: Okay.

15 MR. SCHMIDT: Different year, but same book.

16 JUDGE SIPPEL: Same book.

17 MR. SCHMIDT: It comes out every year, Your Honor.

18 JUDGE SIPPEL: Do you want this in evidence?

19 MR. PHILLIPS: Yes, Your Honor.

20 MR. COHEN: What did you mark it as?

21 MR. PHILLIPS: 330.

22 MR. COHEN: No objection, Your Honor.

23 JUDGE SIPPEL: It's in evidence.

24 (Whereupon, the above-referred to document was received
25 into evidence as GSN Exhibit No. 330.)

1 BY MR. PHILLIPS:

2 Q Dr. Singer, if you'd look -- and what is this -- do you
3 recognize this document, sir?

4 A Yes.

5 Q And what is it?

6 A It's the cover page of the Kagan -- the SNL Kagan book on
7 the economics of basic cable networks.

8 Q Can you turn to page 613, sir?

9 A I see 3 -- oh, sorry.

10 JUDGE SIPPEL: What page are you looking for?

11 MR. PHILLIPS: 613, sir.

12 THE WITNESS: Okay. I'm at -- I'm at that page.

13 JUDGE SIPPEL: I am too.

14 BY MR. PHILLIPS:

15 Q And could you tell me what Kagan says is the average
16 license fee per sub per month for WE tv in 2010?

17 A In 2010?

18 Q Yes.

19 A It looks like it's [REDACTED].

20 Q Okay. Now, which do you think is the more reliable
21 figure, the one you used in your table or the one in SNL Kagan?

22 A Well, if we're looking at it from the perspective of what
23 Cablevision has to pay to get a ratings point, I think using
24 Cablevision's pricing data is probably better of the two.

25 Q Thank you, sir. You can put that aside.

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1 A Okay.

2 JUDGE SIPPEL: I'm sorry. What year?

3 THE WITNESS: 2010, Your Honor.

4 JUDGE SIPPEL: 2010?

5 BY MR. PHILLIPS:

6 Q So your Table 8 reflected --

7 JUDGE SIPPEL: You're coming up with what number? Got
8 it.

9 BY MR. PHILLIPS:

10 Q Okay. So, Dr. Singer, your Table 8, which -- your Table
11 7, if I understand it, which reflects pure carriage as different
12 than the GSN table that Mr. Cohen showed you in Exhibit 162,
13 because you used the actual figure not the estimate, correct, sir?

14 A Correct.

15 Q Okay. Mr. Cohen also -- Mr. Cohen asked you a lot of
16 questions about why you came up with the decision that the people
17 who tiered -- who got subsidies versus the people who didn't get
18 subsidies had any significance. Do you recall that, sir?

19 A Yes.

20 Q And you said, sir, that you recall seeing a document that
21 talked about the discretion, correct, sir?

22 A Yes. That's what I testified to.

23 MR. PHILLIPS: Well, I'm -- do we have any other copies
24 of this?

25 BY MR. PHILLIPS:

1 Q I'm going to show you --

2 MR. COHEN: Can we take a one-second break so we can make
3 copies? Could you give us the numbering of the --

4 MR. PHILLIPS: Yes. GSN Exhibit 124.

5 MR. COHEN: Okay. 124?

6 MR. PHILLIPS: Yes.

7 MR. COHEN: If you'll give us a second, we can --

8 JUDGE SIPPEL: Let's go off the record for a minute.

9 (Whereupon, the above-entitled matter went off the record
10 at 5:10 p.m. and resumed at 5:12 p.m.)

11 JUDGE SIPPEL: Let's go back.

12 BY MR. PHILLIPS:

13 Q So this is GSN Exhibit 124, which is in evidence, and
14 it's from Mr. Boler of Cablevision to Michael Ciszek and Shaun
15 McKenzie, and it contains down in it, you'll see an email from Mr.
16 Bickham. Do you see that?

17 A Yes.

18 Q And it's dated February 4, 2011?

19 A It seems like it's around the tiering episode.

20 Q Exactly, sir. And what he says here, Mr. Bickham
21 says--do you know who Mr. Bickham was, by the way?

22 A At one point, I had his position, but I don't think I can
23 call it up right now.

24 Q He's a very senior guy at Cablevision in charge of making
25 the decisions about distribution.

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1 A Okay.

2 Q He says "I'm not comfortable [REDACTED]

3 [REDACTED] customers that have
4 already called us." Do you see that, sir?

5 A Yes.

6 Q And this is--I'm sorry, I should have noted that the
7 subject line is GSN; correct sir?

8 A Yes.

9 Q And he goes on to say [REDACTED]
10 [REDACTED] to any sub who calls and complains or threatens to disconnect
11 from this point forward." Do you see that?

12 A Yes.

13 Q And he goes on to say [REDACTED]

14 [REDACTED]; I'm
15 comfortable leaving the customer rep or sales rep with this
16 flexibility for the next two weeks." Do you see that, sir?

17 A Yes.

18 Q Okay. Is this the document that you're referring to that
19 you saw?

20 A Yes.

21 MR. PHILLIPS: Okay. I don't have any further questions.
22 Oh, I do have a further question. I've got one more.

23 MR. COHEN: Please, please, please take your time.

24 BY MR. PHILLIPS:

25 Q Which is now after he had made the decision to tier, and

1 after he implemented the decision to tier, he got [REDACTED] phone
2 calls. Is it your understanding that Cablevision had access to the
3 data showing the effect of that tiering decision every day; correct
4 sir?

5 A They certainly had access to the call logs; they
6 know--I'm not sure I follow which data you're referring to, but
7 they know who's calling.

8 Q And they've got access to their own set-top box data,
9 don't they sir?

10 A Correct.

11 Q And they've got--and they know the facts about what the
12 effect of the tiering that they had observed after it has happened
13 sir, doesn't it?

14 A Sure, after the tiering, they certainly know the
15 reaction, yes.

16 Q And indeed, with each day that passes, they gain new data
17 about the effect of that tiering, don't they sir?

18 A Correct.

19 MR. PHILLIPS: I don't have any further questions.

20 MR. COHEN: Keep 124. May I, Your Honor?

21 JUDGE SIPPEL: Yes, just a few.

22 MR. COHEN: Keep GSA 124 in front of you and I think we
23 can close off this point.

24 RECROSS EXAMINATION

25 BY MR. COHEN:

1 Q Do you see the last sentence in GSN 124, [REDACTED]

2 [REDACTED]

3 Do you see that?

4 A Yes.

5 Q So by the time this memorandum went out with respect to
6 discretion, [REDACTED] people had already called; correct?

7 A Correct.

8 Q Put that down. I just want to make sure that we don't
9 leave out--

10 A And it's always been my position they had discretion
11 after--

12 Q After. Well, I think this actually sets--I think we can
13 now close that this sets the date in which the discretion began,
14 correct?

15 A Correct.

16 Q Okay. I don't want there to be any impression that we're
17 playing games with the CPMs, so look at the document GSN 65 that
18 you got from Mr. Phillips, and he showed you on page 2--

19 A Can you show me what's the front of the document look
20 like?

21 Q It's this big--the red chicklets. No? Did you take that
22 back. It's got a memo in the front, that's the problem.

23 A Oh, this is it? I got it.

24 Q Remember he showed you the [REDACTED], remember that sir?

25 A I do.

1 Q And I had showed you Cablevision 715, right, the GSN on
2 the last page of 715, and it said for the same time-- [REDACTED];
3 do you remember that?

4 A Yes.

5 Q Now the box, do you know what the up front is on page 2
6 of 65?

7 A No, I don't.

8 Q Okay. And if I represent to you the up front is when
9 only a portion of the advertising for the year is sold, would that
10 make any sense to you? Does that jog your memory in any way?

11 A Sure.

12 Q Okay. But even if you use the [REDACTED], right, which was the
13 up front number, which--and you don't see anything on Kagan that
14 says anything about an up front, do you?

15 A No.

16 Q Even if you use the [REDACTED], and you go back to WE for those
17 two years, and it's [REDACTED], even if we credit the [REDACTED], what it
18 says is that for every 1,000 impressions on WE, advertisers pay,
19 using the up front money, twice as much as they do on GSN, right?

20 A Correct, if you can compare the two, yes.

21 MR. COHEN: Okay. Nothing else.

22 JUDGE SIPPEL: All set?

23 MS. KANE: We have some questions, Your Honor.

24 JUDGE SIPPEL: Are you ready to go forward?

25 MS. KANE: We are ready to go forward.

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1 JUDGE SIPPEL: Okay, let's have it.

2 MS. KANE: Good afternoon. My name is Pamela Kane, I
3 represent the Enforcement Bureau, and with me is Mr.
4 Knowles-Kellett, and we are hoping to get through some of these
5 questions really quickly, because I know you've been on the stand
6 for a long time, so bear with us.

7 THE WITNESS: Okay.

8 (Off the record comments)

9 MS. KANE: All right, we're just going to go through if
10 possible just some of the terms that you've been using during
11 today's testimony; I know we've been using them in different ways
12 and we just want to make sure that the record is clear on what some
13 of these terms mean and how you've been using them.

14 THE WITNESS: Sure.

15 MS. KANE: So bear with us.

16 CROSS EXAMINATION

17 BY MS. KANE:

18 Q The first term we'd like to have your interpretation of
19 is lift. We've had a lot of testimony about lift and the impact of
20 lift, but what I'd like to make sure is that when you're referring
21 to lift, you're referring to the number of people who are watching
22 WE when they no longer have access to GSN, or are you referring to
23 the share? Is it an actual number, or is it a share?

24 A So for certain specifications, we could go into the
25 appendix that shows the four specifications that I do. I start off

1 with Mr. Orszag's, and then I start making little refinements to
2 it. But by memory--I'd probably like to point to it--it's whatever
3 the dependent variable of that churn regression--sorry, the direct
4 test regression is. And my recollection sitting here is that it's
5 the WE TV share of viewing minutes for the household. So is it
6 okay if I can confirm that?

7 Q Oh absolutely. If there's a portion in your testimony
8 that you can refer to, that would be helpful.

9 JUDGE SIPPEL: And while we're doing that by the way, I
10 was going to bring this to your attention, but these--this glossary
11 needs to be reworked. This is what it does, I think these
12 technical terms that we're hearing throughout, things like this up
13 front, up front post analysis, because those terms are going to be
14 seen throughout the testimony here, it would be very helpful if
15 they were broken out in the appendix, so I'm looking for a joint
16 appendix.

17 MR. COHEN: We'll work--

18 MR. PHILLIPS: We've done that in the past--

19 JUDGE SIPPEL: They'll come in with your proposed
20 findings.

21 MR. COHEN: We'll be happy to do it.

22 JUDGE SIPPEL: Thank you. So you're doing a good job for
23 me, also. Thank you, Ms. Kane.

24 MS. KANE: Happy to help, Your Honor.

25 JUDGE SIPPEL: And WE TV--say that again, WE TV share of

1 what?

2 THE WITNESS: So it's the WE TV share at the household
3 level of viewing minutes.

4 BY MS. KANE:

5 Q Can you point us to the specific page?

6 A Yes, page 102, and it's Table A-1.

7 Q And just to clarify for the record, you are looking at
8 GSN Exhibit 301, which is your written direct testimony for today?

9 A Correct. Correct. And if I could, I'd just take you
10 very quickly through the table, so you can see the one percent and
11 the two percent for that.

12 Q It's not so much--I'm asking about the specific numbers,
13 but just what the terminology is referring to, and what I
14 understand if I got your explanation correctly, is that it's a
15 viewing share, but not necessarily relating to specific numbers of
16 viewers, correct?

17 A Correct. Correct. It might be possible to do a
18 mapping--well, I would prefer actually to do a mapping of a lift in
19 or increase in WE TV share into a--you could translate that into
20 additional number of minutes, if you will. I don't think it's very
21 natural to translate it into a number of households, because
22 there's no such thing as a household that exclusively watches WE
23 TV. But to me, the variable of interest here that we're trying to
24 predict is when GSN was taken away from you, what was the increase
25 in your viewing share of WE TV.

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1 Q Now you said it didn't make sense to do it one way; would
2 it make sense to take that lift in viewing share, and translate it
3 into ratings?

4 A It's possible that you could go from viewing shares into
5 ratings, that is possible. I think that if the currency that
6 you're trying to pit this against is denominated in terms of
7 ratings, that might be a sensible thing to do. But I--I'm doing
8 this--just to be clear, I'm doing this as a response to something
9 that Cablevision's expert put forward, and as soon as I show the
10 bias is resolved, I'm getting a statistically significant effect in
11 the share increase, and that's where my inquiry ends.

12 Q And so you didn't take ratings into effect in
13 determining--or you didn't calculate or translate the lift, the
14 addition--I guess the addition of view share into ratings, correct?

15 A I did not, and to be very clear, I mean we touched on
16 this, and I'd like to just elaborate if I could. What--my
17 understanding in implementing the DC circuits test was that I
18 needed to analyze the profit gains or losses to the downstream
19 division, that's what I thought my assignment was in terms of
20 figuring out the impact to Cablevision. What we've been talking
21 about in terms of lift is what's the potentially off-setting gain
22 to the upstream division. I did not monetize that, I did try to
23 translate that into a dollar figure because I thought that that was
24 outside of the scope of what the DC circuits test was intended to
25 be.

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1 Q I have two questions that come off of that. The first
2 is, we've been using these terms upstream division and downstream
3 division, can you again clarify for the record when you're talking
4 about downstream division, what you're referring to?

5 A Sure. And I use downstream as I think is the convention
6 among analysts and economists, and it's the distribution division.
7 It's downstream because it's closest to the customer.

8 Q And when you say distribution division, what are you
9 referring to?

10 A Like the cable television operations, as opposed to the
11 cable network industry, which is an input. So if I were to stack
12 this as a vertical organization, I would put the programs, the
13 cable networks, including the affiliated and the independents, up
14 at the top in the upstream content network industry, then I would
15 consider Cablevision's downstream division to be that portion that
16 acts as a cable television provider. My understanding of the DC
17 circuit test is to study the impact of the tiering on the
18 profitability of that downstream division. If you can show a
19 profit sacrifice, then it permits an inference that there was some
20 ill-gotten benefit to the upstream division, and my lift analysis
21 is just meant to corroborate that inference.

22 Q So in the vertical integration that you just discussed,
23 where would WE fall? Is WE in the upstream?

24 A Yes.

25 Q And WE doesn't have a downstream, correct?

1 A No, but WE is--

2 Q Downstream is Cablevision?

3 A Downstream is Cablevision.

4 Q Okay.

5 A And so what's happening is that we're trying to assess
6 the impact of the tiering episode on the profits of the downstream
7 division. We want to know this question--would a non-conflicted
8 firm behave the same way as Cablevision, right? Or is it the case
9 that Cablevision's vertical integration into similarly situated
10 women's programming conflicted in such a way that it's willing to
11 incur a downstream loss?

12 Q Thank you, I think that helps clarify the terms that
13 we've been talking about.

14 A Okay.

15 Q Some of the other terms that again we've been using a lot
16 today, and may have multiple meanings, for example, churn. Do you
17 understand that there's an ordinary definition of churn, or a
18 definition of ordinary churn?

19 A Yes. Sure.

20 Q And what would you define that to be?

21 A Churn is a natural phenomenon that's happening all the
22 time to cable operators. They're losing customers; there's a
23 certain amount of decay or churn that happens naturally, and the
24 question is when you engage in conduct that makes your customers
25 unhappy, can we measure the increase in the churn that can be

1 attributable to that episode.

2 Q So for the majority of your testimony today, you were
3 referring more to the churn as the loss of subscribers from
4 Cablevision who canceled based on the --

5 A Correct. If I could just restate it, because there's
6 always churn going on; what I'm really interested in is the
7 incremental churn that can be attributed to the tiering episode.

8 Q And when you say--who's being churned? Just so it's
9 clear for the record.

10 A Sure. The customer decides to leave.

11 Q So this is a Cablevision customer who has left because of
12 the re-tiering?

13 A Exactly.

14 Q And that's what you're referring to is that incremental
15 number of customers who have left beyond the ordinary churn as a
16 result of the re-tiering, correct?

17 A That's precisely what my churn prediction model was
18 trying to do.

19 Q I know we've also talked several times today, and you've
20 testified several times today about various duplication
21 measurements, correct?

22 A Yes.

23 Q And I just want to clarify for the record that for the
24 purposes of your analysis, you measured primary duplication as the
25 number of viewers who would watch both GSN and WE TV, conditioned

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1 on the fact that they had already been watching GSN, correct?

2 A The primary?

3 Q The primary.

4 A Yes, but that's not my definition, that's--this is the
5 way that Nielsen keeps the data. You have three choices; they keep
6 it as primary, secondary or both. I was just trying to recite my
7 understanding of the definition.

8 Q I believe your definition in the report uses--I believe
9 your definitions earlier today were using the broader terms, and I
10 just wanted to clarify who was each category of entity that you
11 were referring to for each of the duplications, if that makes
12 sense? So I believe you used broader terms rather than GSN and WE
13 TV, and so I just want to clarify for the record what we're talking
14 about.

15 A Right.

16 Q So just to reiterate, for primary duplication--

17 A Sure.

18 Q --you were measuring or assessing the measurements of
19 numbers of viewers who would watch both GSN and WE TV, conditioned
20 on the fact that they were already watching GSN, correct?

21 A That is a measure of primary, yes.

22 Q And for secondary duplication, it was essentially
23 measuring the number of viewers who would watch both GSN and WE TV
24 based on the fact that they already were watching WE TV, correct?

25 A Correct.

1 Q And then for both duplication, it would measure the
2 number of viewers who would watch both GSN and WE TV based on the
3 fact that they would watch either one of them, correct?

4 A If they had watched either one of them, yes.

5 Q Okay. This may be a little bit more complicated as a
6 definitional, but earlier today, I believe the Judge asked you to
7 try to quantify how you reached that [REDACTED] figure that reflected the
8 pro-churn estimate for the average number of customers you believed
9 would have left during that time period, and I think you had
10 averaged it from the [REDACTED] to approximately [REDACTED]?

11 A Correct.

12 Q Do you recall the Judge's question on that?

13 A About where did the [REDACTED] come from?

14 Q Correct.

15 A Yes.

16 Q I was wondering if you could clarify for the record where
17 that precise number came from?

18 A Sure. Sure. So what happens is--and I'm doing this by
19 memory, but I hopefully did the math in the report, but the family
20 tier was roughly [REDACTED]. And when you apply
21 this margin that--I'm blanking because it's late--but in the order
22 of [REDACTED],
23 that means you have [REDACTED] of margin hitting the bottom line for every
24 customer who takes the family tier--and this is important--and only
25 the family tier, right? Now I seized on family tier because that's

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1 where GSN previously had been carried, but in reality, even though
2 someone may have been watching GSN on the family tier, they may
3 have subscribed to a more expensive tier that included additional
4 networks. And so in my 2015 testimony, what I do is I do it both
5 ways. I do it once with what I consider to be a very conservative,
6 because again, this presumes that every customer who's leaving was
7 only contributing [REDACTED] a month in video revenue, so very
8 conservative. We know that the average video revenue for
9 Cablevision around this time was [REDACTED]. So I'm going to assume for
10 the second time through, that the departing GSN customer was
11 average, he was your typical customer, he or she was contributing
12 [REDACTED] a month. So when you do the [REDACTED] percent margin figure on the
13 [REDACTED] revenue, you get a loss of about [REDACTED] per month. And of
14 course that changes a lot going from [REDACTED] it causes the
15 losses to rack up much more quickly.

16 Q How did you calculate, or what is the source of this [REDACTED]
17 [REDACTED] percent margin that you were quoting?

18 MR. KROUP: Can we--I'm sorry. I think Mr. Feldman
19 should probably leave; we're getting into the--sorry, sorry to cut
20 you off.

21 MS. KANE: No, that's okay. I'm not as familiar with the
22 confidential--

23 OPEN SESSION ENDS

24 CLOSED SESSION STARTS

25 THE WITNESS: I think that the--you can check where the

1 [REDACTED] came from, but that could have been from public sources.

2 MR. CARNEY: I think that's right.

3 THE WITNESS: What's the next--what was the question, I'm
4 sorry, I'm just--I'm getting tired.

5 MS. KANE: That's all right, understood. And it's been
6 a long day and I appreciate your patience.

7 BY MS. KANE:

8 Q I asked you what was the source for the [REDACTED] percent
9 margin that you applied to--I guess let's start first with the
10 [REDACTED]--well you probably need a figure, right? The [REDACTED] for the
11 family tier, or the--and/or the sort of average [REDACTED] customer,
12 right?

13 A Right.

14 Q What was the source of that [REDACTED] percent margin?

15 A So I have a citation for it. I'm doing this by memory
16 but I think I got it from SNL Kagan as an industry margin average
17 for cable operators. But again, I'm doing that by memory, but
18 that's my best recollection right now. I would--I can try to find
19 it for you, but I'm fairly confident it's cited.

20 Q Is it--is it anything--you don't have a recollection that
21 it's specific to Cablevision's margin?

22 A It's possible that it's specific to Cablevision's margin.
23 It's possible, but I'd have to go into the report.

24 Q Do you recall approximately where--I don't want to delay
25 us unnecessarily here, but if you have a sense of where it might be

1 in the report, that might be helpful.

2 A Sure.

3 JUDGE SIPPEL: While you're looking for that, I thought
4 with the family tier is on this initial glossary, is ■■■--that's a
5 ■■■ per month; ■■■ per month, would that be--

6 THE WITNESS: That's the average video revenue of a
7 Cablevision subscriber.

8 JUDGE SIPPEL: Thank you. So it's not any one particular
9 tier, just the average?

10 THE WITNESS: Just the average. It's assuming that when
11 you lose a customer who's upset over the inability to get GSN,
12 you're losing a typical contribution.

13 JUDGE SIPPEL: Got it.

14 BY MS. KANE:

15 Q And just to follow up on what the Judge's question was,
16 is that typical video customer?

17 A Yes, and in that sense, I'm not trying to grab additional
18 margins that could walk out the door when the customer churns. Of
19 course to the extent that Cablevision is selling a bundle of video
20 and broadband services, if you lose the customer and they
21 disconnect their broadband as well, you could even incur greater
22 losses, but I'm not going to try to grab on to those losses for a
23 churning customer.

24 Q So you didn't estimate a non-video customer or a customer
25 who had a service other than video, like Internet or phone,

1 attached to that customer?

2 A Right, I didn't--I did not attempt to grab the ancillary
3 revenues that could also be lost from a defecting customer. You're
4 still waiting for the response to the--

5 Q I think I've been directed to page 48, I don't know if
6 that's where you are

7 JUDGE SIPPEL: 48 of his testimony?

8 MS. KANE: 48 of his testimony, Your Honor. Perhaps that
9 provides some insight as to--if it's something that you can't put
10 your fingers on quickly that's fine, as long as, again--

11 THE WITNESS: But this is important, because it does
12 answer your question. For 140, to calculate the margin, I did use
13 Cablevision information I glad you refreshed -- I literally looked
14 at the license fees that Cablevision incurred on the family tier,
15 and I subtracted that from the revenues that were generated from
16 customers in the family tier.

17 JUDGE SIPPEL: What page are you on?

18 THE WITNESS: I'm on 140 Your Honor, bottom of 48.

19 BY MS. KANE:

20 Q And so that's how you calculated the [REDACTED] percent margin
21 differential?

22 A [REDACTED] margin, yes.

23 Q So that was information that originated from Cablevision
24 and not from the SNL Kagan report that you thought, correct?

25 A Correct.

1 MS. KANE: I think that's all we have for you today.
2 Again, Appreciate your patience, and thank you very much.

3 THE WITNESS: Sure. Thanks.

4 JUDGE SIPPEL: Anything else of this witness?

5 MR. PHILLIPS: No, Your Honor.

6 JUDGE SIPPEL: Okay. Okay Doctor, you're excused as a
7 witness. I don't think there's any necessary restrictions on this
8 witness, except of course the confidential testimony that you've
9 given. So, we'll see you next time. So that's it for today, is
10 that right?

11 MR. PHILLIPS: Yes, Your Honor.

12 MR. SCHMIDT: We have Dr. Brooks ready to go Monday
13 morning, and that will conclude our case.

14 MR. COHEN: To give you a road map, Your Honor, if that's
15 helpful?

16 JUDGE SIPPEL: Well let me start with this, it's going to
17 be 9:30 Monday morning, Dr. Brooks goes on, and we're going to stay
18 with the hour and 15 minutes for lunch, okay. It's how thing go
19 but that's fine, and then try to go until 5:00 or we'll go to 6:00;
20 what do you think? Okay, now tell me the rest of the road map.

21 MR. COHEN: So I think after Dr. Brooks, that concludes
22 the Defendant's witnesses.

23 MR. SCHMIDT: It concludes our case, that's our five
24 witnesses.

25 MR. MICHON: Should we be on the record?

1 JUDGE SIPPEL: Well, I didn't know we were off, but I
2 guess we should be on the record. I didn't shut it off the record;
3 we were on the record.

4 MR. MICHON: I'm just asking--

5 JUDGE SIPPEL: Have we been on the record? We have been
6 on the record. We're on the record.

7 MR. MICHON: I didn't know--

8 JUDGE SIPPEL: We are. We are. Okay, so what's the next
9 thing?

10 MR. COHEN: And then after Dr. Brooks, we
11 will--Cablevision will begin to put on its witnesses. The first
12 witness will be Mr. Montemagno, so we can all practice his name
13 over the weekend. It's taken me a while. We will then call Dr.
14 Poret out of turn, because he's got a trial in California on
15 Wednesday, so we need to get him on or off on Tuesday.

16 JUDGE SIPPEL: And what's he going to testify to?

17 MR. COHEN: He's our survey expert.

18 JUDGE SIPPEL: Survey expert, okay. How long do you
19 expect he would be on the stand?

20 MR. COHEN: I don't think he'll be on very long, it
21 really will depend on the cross; the direct will be a half an hour.

22 JUDGE SIPPEL: Okay. Let's go.

23 MR. COHEN: So that will--and then I don't think we will
24 get--so then if there's more time on Tuesday, we will either--and
25 I'll let Your Honor know as soon as we can--either turn to either

1 Ms. Doree, D-O-R-E-E, the Head of Programming at WE, or Mr.
2 Broussard, who is the Head of Distribution for AMC Networks, the
3 corporate parent that used to be called Rainbow, that has the
4 networks including WE. So that will certainly get us into
5 Wednesday, and once those witnesses have testified, then we have
6 three expert witnesses. We have--and our expectation is that the
7 first expert after the fact witnesses will be Mr. Egan, who Your
8 Honor knows.

9 JUDGE SIPPEL: Yes.

10 MR. COHEN: After Mr. Egan, we will put on Mr. Blasius,
11 who's our advertising expert, and then we'll conclude with Mr.
12 Orszag, who's Dr. Singer's counterpart.

13 JUDGE SIPPEL: Mr. Orszag. Now what's your best estimate
14 as to--I know you can't control the time so much of the cross
15 examination, but you know, given everybody doing their job the
16 right way, what do you think it would be? What are we going to do
17 time wise with this?

18 MR. SCHMIDT: I think realistically we're looking at
19 going into the week of the 20th.

20 JUDGE SIPPEL: Really?

21 MR. SCHMIDT: It took us five days to do five of our
22 witnesses--

23 JUDGE SIPPEL: Four days.

24 MR. SCHMIDT: No, we're talking Monday as well. Four
25 days to do four of our witnesses, five days to do five of our

1 witnesses; we're not going to be able to--it strikes me as very
2 hard that we're going to be able to do eight of their witnesses or
3 seven of their witnesses in four days or four and a half days, and
4 you've got a couple of those that are big ones like Mr. Orszag,
5 who, as Mr. Cohen said, is kind of the equivalent to Dr. Singer in
6 terms of the heft of his report.

7 JUDGE SIPPEL: Well I expect him to probably take most of
8 the day.

9 MR. SCHMIDT: I think it would be hard to get him done in
10 less.

11 MR. PHILLIPS: I do have--and I've told Mr. Cohen this,
12 and we can discuss this later--I start another trial in a couple of
13 weeks, Your Honor, in New York, and so to the extent that, you
14 know, we can do Mr. Orszag a little earlier--

15 MR. COHEN: I just don't think I have the flexibility,
16 but we'll go back and if we can accommodate you, we certainly will.

17 MR. PHILLIPS: It wouldn't make a difference if--unlike
18 this trial, that other trial I can't ever not--

19 MR. COHEN: The only issue we have is that some of the
20 records are just not available.

21 MR. SCHMIDT: Well let's--we'll discuss it. But in a
22 similar vein, Your Honor, I have a long-standing matter that's been
23 scheduled, an argument up in Atlantic City of all places, that's
24 been scheduled for the 21st, so a week from Tuesday. I don't think
25 that impacts, as we're discussing the witnesses, any witness I was

1 going to be examining, but if it's okay with Your Honor, I would
2 miss that one day. It wouldn't require any shifting on the Court's
3 end, but I just wanted--

4 JUDGE SIPPEL: Well that's okay. I'm sure you'll be well
5 covered.

6 MR. SCHMIDT: I know I will be.

7 JUDGE SIPPEL: I do have a doctor's appointment, Monday
8 the 20th, so--and I'll see if I can get it changed; this is the
9 third time I'd be changing it, but that's okay. It's something
10 that obviously is no--it's not a significant matter, but it's
11 important. I also have that mine safety case in Kentucky the
12 following week, so this--

13 MR. SCHMIDT: I think we'll all commit ritual suicide if
14 we go into a fourth week--

15 (Simultaneous speaking.)

16 MR. COHEN: We should not take two weeks to do--

17 MR. SCHMIDT: I agree with that. If we're going into
18 that third week, it should be a day or two.

19 JUDGE SIPPEL: All right.

20 MR. SCHMIDT: The week of the 20th, I agree.

21 JUDGE SIPPEL: Yes. All right.

22 MR. SCHMIDT: Frankly, Your Honor should give us a hard
23 deadline of Tuesday of that week.

24 (Simultaneous speaking.)

25 JUDGE SIPPEL: I really, really, just two days of that

1 week is more than enough, so I'm going to be a little bit--maybe
2 pushing traffic a little more vigorously next week, but I still
3 want to see a good job done like you're doing. So I don't want to
4 upset the apple cart.

5 MR. SCHMIDT: And this is why before the hearing, we
6 raised the issue about time limits, because as Mr. Cohen said a
7 couple of times, this hearing really is about the cross. They've
8 had their time on cross, now we're getting into our time on cross.
9 We're going to be efficient, I don't think we're going to have a
10 problem finishing Monday or Tuesday, but we do want to give Your
11 Honor the issues that we think our witnesses present on cross.

12 JUDGE SIPPEL: We --

13 MR. SCHMIDT: Yes.

14 JUDGE SIPPEL: But as I say, you're all doing an
15 excellent job, and I feel we've accomplished a heck of a lot this
16 week. You all have, certainly. But from an information
17 standpoint, you've done a good job. Okay, we are then in recess
18 until 9:30 Monday morning. Have a good weekend. Drive safely.

19 CLOSED SESSION END

20 (Whereupon, the proceedings recessed at 5:45 p.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: GSN v Cablevision

Before: FCC

Date: 07-10-15

Place: Washington, DC

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